

186. Ms. Douglas' past broadcast experience consists of serving as a religious counselor and recruiter for other counselors at television station KTBN-TV, Santa Ana, California (Good News Exh. 1).

187. Ms. Douglas is Black.

#### Shirley Robbins

188. Ms. Robbins will work full time, at least 40 hours a week, as Good News' Business Affairs Manager. (Good News Exh. 2).

189. Ms. Robbins is presently a resident of San Bernardino, California. Prior to moving to San Bernardino, Ms. Robbins lived for 17 years in Pomona, California, a community immediately adjacent to San Bernardino and within the proposed station's city grade contour, and prior to that in Los Angeles County, also within the city grade contour. She will continue to live within the city grade service area in the event that Good News receives the construction permit (Good News Exh. 2).

190. Ms. Robbins is involved in, or has previously been involved in the following activities in Pomona and in the southern California area:

1980 - Present	Member of the Board of Directors for Legal Aid Assistance for Pomona City.
1980 - 1981	Representative for San Bernardino area to State Senator Ayala.
1980	Prayer counselor for a local radio station, and she also wrote both religious and social articles for the local paper of Pomona, California.
1979	Representative for San Bernardino area Congressman Jim Lloyd to State Democratic Committee.
1978 - 1981	Member of Inland Empire Urban League (San Bernardino) and committee member for the League Equal Opportunity Commission.
1977 - 1980	Member of the YMCA Board of Directors Outreach program of Pomona.
1974 - 1977	Member of the Mt. San Antonio Community College Advisory Board (Walnut, California).
1970 - 1974	Member of the Board of Directors of the Greater Pomona YWCA.
1968 - 1972	PTA President for North San Antonio School of Pomona. Member of the Board of Trustees of Mt. Sinai Church of God in Christ.

191. She has also received the following awards or citations as a result of her community involvement:

1978	Woman of the Year Award from the New Gethsemane Church of Pomona.
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1979

Los Angeles County Award from Office of Human Relations Commission. Kiwanis Club (San Dimas) citation for community involvement. Girl Scouts (Pomona) citation for community involvement.

1979

1979

192. Ms. Robbins has no past broadcast experience.

193. Ms. Robbins is Black.

#### Diversification of Ownership of Media

194. Good News and its general partner have no interests in any medium of mass communications other than this application for Channel 30. Reverend Malki's religious organization produces television programming of a religious nature which is broadcast outside the United States. It is, therefore, of no significance here. His organization also publishes a monthly newsletter which is mailed to contributors and supporters of his ministry throughout the United States, including those who reside in the San Bernardino area (Tr. 1688). The limited nature of the newsletter's distribution also renders this media interest of little or no decisional significance under the diversification criterion.

#### Conclusions of Law

195. As noted above, Good News claims a 100 percent full-time integration credit on the basis of its proposal to integrate into the affairs of its station Ms. Ekizian, Ms. Robbins, and Ms. Douglas, the members of the Board of Directors of applicant's general partner. The claim is based on the contention that Good News' Limited Partnership Agreement vests full and exclusive control of the management, conduct and operation of the affairs and business of the partnership in its general partner and that partner's directors; and that the limited partner's participation in the affairs of the partnership, since Reverend Malki withdrew from the Board of Directors of applicant's general partner, has been limited to financial matters only.

196. The Commission has traditionally looked behind the mere form of an applicant's organization in order to determine whether those individuals who are ostensibly in control will in fact control and direct the applicant and the proposed broadcast facility. In this case, the evidence of record indicates with great clarity that the prime force behind the Good News application was and remains Elias Malki. When Good News filed its application as a limited partnership, the general partner, Good News Broadcasting Network, Inc. (GNBN), had four directors, one of whom was Elias Malki (Tr. 1364). He was also president of applicant's general and limited partners, and he signed the original Certificate and Agreement of Limited Partnership in his dual capacity as president of both the general and limited partners (SSP Exh. 6). Reverend Malki was also designated to serve as general manager of the proposed station in addition to being president of both the general and limited partners (Tr. 1440-41).

197. When advised by counsel that he should resign from the general partner's Board of Directors in order to strengthen Good News' comparative position, Elias Malki asked his daughter, Rebecca Ekizian, to serve as a director as well as president of Good News' general partner (Tr.

1663-66). Mr. Malki also invited GNBN's other two directors, Ms. Robbins and Ms. Douglas to serve as directors of Good News (Tr. 1450-51), both of whom were unaware of the availability of Channel 30 prior to being contacted by Reverend Malki (Tr. 1342, 1503). Mr. Malki resigned his position as a member of GNBN's Board of Directors at a meeting held at his residence, and Ms. Robbins and Ms. Douglas voted to admit Ms. Ekizian to the Board (Tr. 1316-17, 1364-67, 1420, 1460-62). No other person was considered for the position of director at that meeting (Tr. 1506), and it was at the same meeting that Ms. Ekizian was selected to serve as the proposed station's General Manager (Tr. 1577-79). Both Ms. Robbins and Ms. Douglas knew that Ms. Ekizian was Reverend Malki's daughter when they elected her to replace him on the Board (Tr. 1349, 1506-07).

198. Although Reverend Malki removed himself from the Board of Directors, his active participation in prosecuting the application and his involvement in the affairs of the applicant did not cease, and he did not assume the role of a passive limited partner. He attempted, initially, to retain control by including in the Partnership Agreement a provision whereby the limited partner had full unilateral power to remove the general partner's directors (SSP Exh. 6; see, Provision numbered 18 of the Limited Partnership Agreement).<sup>11</sup> This Provision was subsequently removed from the Agreement upon advice of counsel (SSP Exh. 7; Tr. 1332, 1389-90). The amended Agreement, however, continues to provide that no additional persons can be admitted as either a general partner or a limited partner without the written consent of the limited partner (SSP Exh. 6, Provision 9; SSP Exh 7, provision 9). Furthermore, the Agreement is silent as to how the parties' interests are voted in partnership matters. One of the directors of the general partner testified that the limited partner votes its 90 percent interest and each of the three directors of the general partner individually votes her respective 3 1/3 percent interest (Tr. 1340-41, 1343).

199. The evidence of record discloses a lack of any meaningful participation in this endeavor on the part of the directors of the general partner, and a collective willingness on their part to permit Reverend Malki to continue to exercise an overriding influence and control over the applicant, an attitude likely to continue if Good News becomes the licensee for the facility in San Bernardino. For example, Ms. Robbins, the applicant's Secretary, did not know whether the general partner had a charter, articles of incorporation and/or by-laws (Tr. 1321). Although she indicated that she maintained some of the partnership's records, she was not sure who maintained the rest (Tr. 1321-22). The current directors were unaware of who executed the general partner's By-laws or Articles of Incorporation, or whether they have ever been filed with the State of California or amended (Tr. ds, shel363, 1452-54, 1589-90).

200. The record also indicates that the general partner has abdicated all responsibility for Good News' financial affairs to the limited partner. Ms. Douglas, the partnership's Treasurer (Tr. 1451-52), was unsure of the financial obligations of the partners (Tr. 1509-10), and did not know of the status of Good News' checking account, specifically, who had paid money in the account and how much was on deposit in the account (Tr. 1481-85). She was unable to indicate with any certainty from whom she acquired Good News' checks but believes that Reverend Malki opened the account and sent her the checks in the

mail (Tr. 1486-87). She apparently knew or assumed that Reverend Malki had a signature card but cannot recall withdrawing his signature card, and she had no knowledge of what he might have done prior to the time she received the checkbook (Tr. 1487-88). Ms. Douglas was able to say only that she believed that the limited partner was financing the application (Tr. 1509). Ms. Robbins, another director, did not know if the limited partner had made a \$9,000 contribution as required by the Partnership Agreement but added that the applicant's bills were being paid (Tr. 1385). Ms. Ekizian also indicated that she did not know where the limited partner's contribution had gone but that it had not gone into the general partner's account, since no deposit had been made into that account since the initial deposit of \$1,000 (Tr. 1594).

201. The general partner, by the terms of the Partnership Agreement, is required to pay \$1,000. According to Ms. Ekizian, Reverend Malki paid that amount for the general partner (Tr. 1592). The limited partner also seemed to be the source of all funds for prosecuting the application. Ms. Douglas believes that the limited partner was financing the prosecution of the application (Tr. 1509) including lawyer's fees and the costs of her transportation to Washington, D.C. for the hearing (Tr. 1520-21). The funds were clearly not coming from the general partner's checkbook which was under the control of Ms. Douglas and Ms. Ekizian (Tr. 1487, 1593-97).

202. The facts, as set forth above, demand the conclusion that Reverend Malki, far from being the passive non-involved limited partner, has in fact been active promoting the application. He prepared the application and, with the assistance of legal counsel chosen by him, prepared all of the organizational materials. He also chose all of the members of the Board of Directors of the applicant's general partner, and then specified what roles they would fill at the station, including designating his own daughter as one of the directors as well as president of the general partner and the station's proposed General Manager. In addition, he made all of the financial arrangements for the applicant, and he assumed full responsibility for all of the expenses of the enterprise without the involvement or even the knowledge of the general partner. The Presiding Judge concludes, therefore, that Reverend Malki, the President of Good News' limited partner and holder of 90 percent of applicant's equity, effectively controls and manages the applicant and would, in the event that Good News is the chosen licensee, control and manage the proposed station. The past behavior as well as the general demeanor of the general partner's directors offer no assurance that the general partner will assert its independence of the limited partner in the event of a grant. Notice is taken, in this regard, of the testimony of Ms. Robbins and Ms. Douglas, two proposed integrated principals, to the effect that they continued to have telephone conversations with Reverend Malki as late as April 1984 regarding matters dealing with the application at hand (Tr. 1393, 1396-97, 1495-96), and Ms. Robbins' statement to the effect that since she and Mr. Malki are going to be working together they call each other from time to time (Tr. 1396-97), adding that she calls Reverend Malki when she receives correspondence regarding this proceeding from counsel (Tr. 1397).

203. Good News' proposal is to integrate Ms. Ekizian as General Manager, Ms. Douglas as Public Affairs Director/Chief Financial Advisor, and Ms. Robbins as Business Manager. Because of the dominant role played by

Reverend Malki throughout the course of the prosecution of Good News' application and the deference that these three individuals have shown towards him, in effect ceding all responsibility to him, it is highly unlikely that anyone of these persons will exercise a policy making role at the station. For example, Ms. Ekizian was unsure of the full extent of Ms. Douglas' responsibilities at the station (Tr. 1580), as well as the length of her own term as president (Tr. 1588). In addition, she was unfamiliar with the general partner's By-laws and Articles of Incorporation, although she had read them (Tr. 1590-91), and she played no part in amending the Limited Partnership Agreement (Tr. 1605). Ms. Robbins and Ms. Douglas were both unfamiliar with any of the general partner's corporate documents. All three of the proposed integrated principals were also extremely vague as to their proposed duties at the station. Ms. Ekizian, the proposed General Manager, had difficulty in describing the roles of the other two integrated principals, indicating, simply, that Ms. Douglas will maintain the financial records and Ms. Robbins will oversee the budget. Ms. Robbins appears to view her duties as essentially bookkeeping functions (Tr. 1310), and Ms. Douglas as essentially clerical with some public relations responsibilities (Tr. 1434-37). Their hands-off attitude in the past as well as the vagueness of their testimony as to their respective roles at the station warrants the conclusion that they will not be involved in any meaningful way in the affairs of Good News' proposed station. The Presiding Judge considers it highly unlikely that anyone of these individuals, all of whom lack policy making or management experience, will take a stand independent of Reverend Malki. Accordingly, the Presiding Judge concludes that Good News is not entitled to any quantitative integration credit.

204. However, in the event that this finding is overturned on review, and Good News is found to be entitled to some or all of its claimed integration credit, the Presiding Judge reaches the following additional conclusion: Ms. Ekizian's claim to minority status is rejected. Ms. Ekizian seeks a preference for minority status based on the allegation that she is, in part, of Native American heritage, specifically 12.5 percent, although in the past she has made no effort to document this aspect of her family history (Tr. 1626-27, 1629). Ms. Ekizian was not born on a reservation (Tr. 1621) and she has never lived on an Indian reservation. Furthermore, she does not know whether her alleged Native American ancestors ever lived on a reservation (Tr. 1648). In addition, Ms. Ekizian does not have an identification number with the Bureau of Indian Affairs (Tr. 1621), and she failed to identify a single activity in which she has participated which has anything to do with her alleged Native American heritage (Good News Exh. 3). Accordingly, the Presiding Judge finds no support in the record for Ms. Ekizian's claim to minority status, other than her self-serving testimony, and the claim will be disallowed. Any quantitative integration awarded Good News would however be qualitatively enhanced by the local residences of Ms. Robbins and Ms. Douglas and their involvement in the civic affairs of that community. It would be further enhanced by Ms. Ekizian's intention to move to San Bernardino in the event that Good News receives the permit. Ms. Ekizian's residence in San Bernardino as a child is too remote in time to be of any decisional significance. There is no indication in the record that any one of the three integrated principals has broadcast experience of the type

which would qualify Good News' integration proposal to an additional qualitative enhancement for prior broadcast experience.

#### INLAND EMPIRE TELEVISION

##### Findings of Fact

205. Inland Empire is a limited partnership formed pursuant to the Uniform Limited Partnership Act of the State of California (Inland Empire Exh. 1; SBBLP Exh. 6). It has three general partners who hold the following equity and voting interests:

David Duron	42.8% (voting)
	10.00% (equity)
Robert Navarro	28.6% (voting)
	6.66% (equity)
Susan Racho	28.6% (voting)
	6.66% (equity)

As of the B cutoff date, Inland Empire had nine limited partners, with the following equity interest:

Pierce O'Donnell	18.24%
Frank S. Kilpatrick	18.24%
Jeffrey S. Gordon	12.16%
Dr. Bart B. Sokolow	9.64%
Paul Wolff	9.64%
George R. Hedges	2.19%
Stephen F. Pflaum	2.19%
Anne B. Roberts	2.19%
Alan Stamm	2.19%

#### Best Practicable Service

##### David Duron

206. Mr. Duron will work full time, a minimum of 40 hours per week, as General Manager 2.19% Anne of Inland Empire's proposed station (Inland Empire Exh. 3; Tr. 2589). In that position, Mr. Duron will have general management responsibilities and will direct the overall operation of the station, including the general administration, supervision and management of the station and its various departments (Inland Empire Exh. 3).

207. Mr. Duron has resided within the city grade contour of the proposed station for the last 40 years (Inland Empire Exh. 3; Tr. 2589). He presently resides at 1140 North Cedar, Glendale, California (Inland Empire Exh. 4; Tr. 2589). In the event that Inland Empire receives the permit for the San Bernardino broadcast facility, Mr. Duron has indicated that he intends to live somewhere within the city limits of San Bernardino, California (Inland Empire Exh. 3; Tr. 2653).

208. Mr. Duron devotes a minimum of 2 hours per week to the Small Area Wilderness Preservation, a non-profit corporation created to save and preserve the nearby mountain ranges in Glendale, California (Tr. 2609). He has been a member of that organization since 1980 and has served on its Board of Directors since 1982 (Inland Empire Exh. 4). In addition, he spends approximately 3-4 hours a month working with the Latino Writers Committee of the Writers Guild of America (Inland Empire Exh. 4; Tr. 2600-01, 2609). In 1980, Mr. Duron served for a period of a year as Treasurer of the UCLA Chicano Students Association, of which he remains a member (Inland Empire Exh. 4; Tr. 2600-01).

209. Mr. Duron has been employed in the broadcast industry exclusively since 1970. He has served as producer, writer, and creator of programs, as well as an account executive and sales manager at various radio and television stations in the greater Los Angeles area. From 1970 to 1972, he was employed as a television producer/writer for KABC-TV, Los Angeles, California, where he worked full time creating, writing and producing a weekly children's series (Inland Empire Exh. 4). In addition, between 1972 and 1973, he worked on a pilot for another children's program for KHOU-TV, Houston, Texas, and from 1973 to 1975, as a full-time producer/writer for various public service programs at KNXT-TV, Los Angeles, California (Inland Empire Exh. 4). From 1976 to 1979, Mr. Duron was the Senior Unit Manager for the Los Angeles public broadcast station KCET-TV, and in 1982 and 1983, Mr. Duron was employed as an Account Executive and Sales Manager for KFOX-FM, Redondo Beach, California. Between February 1984 and February 1986, he served as an Account Executive with KFWB-AM in Los Angeles, California (Inland Empire Exh. 4). Since that time, he has been an Account Executive for radio station KNX-AM, Los Angeles, California. (See, Petition for Leave to Amend filed by Inland Empire on February 7, 1986, received by Order, FCC 86M-765, released February 28, 1986.)

210. Mr. Duron is Hispanic.

#### Robert Navarro

211. Mr. Navarro will work full time, a minimum of 40 hours a week, as the proposed station's Director of News and Public Affairs (Inland Empire Exh. 3; Tr. 2708, 2597, 2721). In that position, it is reported that he will manage and supervise the News and Public Affairs Department (Inland Empire Exh. 3).

212. Mr. Navarro presently resides in Huntington Beach, California, and has maintained a residence within the station's proposed city grade contour for approximately the past 30 years. In the event of the grant of Inland Empire's application, Mr. Navarro proposes to move to the city of San Bernardino (Inland Empire Exh. 3, 5).

213. Mr. Navarro is a founding member of Nosotros, an organization of Hollywood professionals formed to change the image of Hispanics in motion pictures and television. The year 1979 is the last time that he devoted any time to this organization (Tr. 2710). He was also a founding member of the California Chicano News Media Association, an organization established to provide scholarships in journalism for Hispanic students (Inland Empire Exh. 5), and he currently devotes 2 to 3 hours a week to that organization, although prior to 1980, he spent substantially more time on that activity (Tr. 2710-11).

214. Mr. Navarro has been employed in the broadcasting industry since 1961. He worked at station KORK-TV, Las Vegas, Nevada from 1961 to 1963 as an in-studio director. From 1963 to 1966, Mr. Navarro served as News Director and Anchorman at station KSHO-TV in Las Vegas. From 1966 to 1967, he was employed by ABC-TV and ABC radio as a Field Producer and Radio Writer in Los Angeles, and from 1967 to 1971, Mr. Navarro worked as a News Writer and Producer for KNXT-TV in Los Angeles. In 1971 and until 1976, Mr. Navarro served as a reporter for the same station and hosted a weekly television program. In 1976 he was employed as a television reporter for KPIX-TV in San Francisco, California, and from 1977 to 1978, Mr. Navarro served as a producer for KCET-TV (Inland Empire Exh. 5). In 1978, after serving

as a reporter for two months, Mr. Navarro was named KNBC-TV's Bureau Chief for the station's Orange County office and still serves in that position (Inland Empire Exh. 5).

215. Mr. Navarro is Hispanic.

#### Susan Racho

216. Ms. Racho is committed to working full time, minimum of 40 hours a week, as the proposed station Director of Production (Inland Empire Exh. 3; Tr. 259, 2660). It is reported that in that position she will direct and manage the planning, development, production and packaging of programs for airing at the station (Inland Empire Exh. 3).

217. Ms. Racho presently resides in Gardena, California and has resided within the station's proposed city grade contour for approximately the last 25 years (Inland Empire Exh. 3). She proposes to move to the city of San Bernardino in the event of a grant of Inland Empire's application (Inland Empire Exh. 3).

218. Ms. Racho is a member of the Latina Political Assembly in Los Angeles, a state-wide Hispanic women's organization designed to act as a public forum for state and national policy makers to address issues of concern to its members (Inland Empire Exh. 6). From 1972 to 1974 she served as a member of the President's Task Force on Chicanos at the University of California, and she was also a member of the California Association of Latinos in Broadcasting in Los Angeles, an organization intended to promote Latin involvement, equal opportunity, and a positive image for Latinos in the media. From 1977 to 1980 she served as a board member of the Independent Documentary Group, Inc. in San Francisco, California, an organization that was formed to produce documentary film in the areas of human rights, social justice, consumer interest, and environmental concerns (Inland Empire Exh. 6). In 1972, Ms. Racho served as Chairperson of the University of California Conference of MECHA, the Chicano student organization.

219. Ms. Racho has in the past worked as a production manager for an independent production company and as a free-lance script supervisor for various production companies (Inland Empire Exh. 6; Tr. 2660), as well as an associate producer and writer on a number of programs that have received awards (Inland Empire Exh. 6; Tr. 2688). From 1982 through 1984, Ms. Racho was employed by KCET-TV, the PBS station serving Los Angeles, to manage and produce programming for public television, and she worked as producer/writer, associate producer and talent coordinator (Inland Empire Exh. 6) as well as script supervisor and post-production associate for various productions (Inland Empire Exh. 6). From 1978 to 1980, Ms. Racho was a production coordinator, researcher, writer, associate producer, assistant director, script supervisor, and production associate at KCET-TV (Inland Empire Exh. 6). From February 1981 through February 1983, she was employed by Jazz America in Los Angeles where she served as production coordinator/production associate on musical programs (Inland Empire Exh. 6).

220. Ms. Racho is Hispanic.

### Diversification of Ownership of Media

221. Inland Empire has no interest in any media of mass communications other than its application for the construction permit for Channel 30, San Bernardino, California (Inland Empire Exh. 2). As of the B cutoff date, David Duron was a Sales Manager for KFOX-FM at Redondo Beach, California. He then became an Account Executive with Falcon Communications, a company which operates a cable system in Altadena, California, followed by a stint as an Account Executive for KFWB-AM in Los Angeles. He is now an Account Executive with station KNX-AM in Los Angeles, California. Prior to the so-called B cutoff date, and at the time he assumed his various new positions, Mr. Duron committed himself to resign from these positions subsequent to the grant of Inland Empire's application and prior to the issuance of program test authority for the station (Inland Empire Exh. 2; Petition for Leave to Amend filed by Inland Empire on December 21, 1983, received by *Order*, FCC 84M-839, released February 16, 1984; Petition for Leave to Amend filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984; Petition for Leave to Amend filed by Inland Empire on February 7, 1986, received by *Order*, FCC 86M-765, released February 28, 1986).

222. Mr. Navarro, as of the B cutoff date, was employed as the Bureau Chief in Orange County, California for KNBC-TV (Inland Empire Exh. 2). Prior to that time, Mr. Navarro committed himself to resign that position should Inland Empire's application be granted (Inland Empire Application, Exh. 1).

223. Prior to the B cutoff date, each of Inland Empire's general partners signed a pledge committing themselves to divest, in the event of the grant of Inland Empire's application, any interest in any medium of mass communications then held or acquired in the future (Tr. 2714-16, 2869).

224. As of the B cutoff date, Dr. Burt B. Sokolow, a limited partner in Inland Empire held a 5.2 percent interest in West Coast United Broadcasting Co., then an applicant and now a permittee for television station Channel 38 in San Francisco, California (Inland Empire Exh. 2). Prior to that date, however, Dr. Sokolow committed himself to divest that interest in the event of a grant of Inland Empire's application and prior to the grant of program test authority for the station (Inland Empire Amendment filed June 24, 1983, Exh. 1; Tr. 2883-86).

225. Subsequent to the B cutoff date, Dr. Sokolow acquired an interest in Pasadena Media, Inc., now National Media, Inc. and became a director (Tr. 2891) on December 30, 1983 (Tr. 1753, 2652, 2891; Inland Empire Exh. 2; Petition for Leave to Amend filed by Inland Empire on January 28, 1987, received by *Order*, FCC 87M-497, released March 6, 1987). Pasadena Media is a newly formed corporation which publishes a weekly newspaper (*The Weekly*) which is distributed in Pasadena and Altadena, California, and *Nine-to-Nine*, a biweekly newspaper distributed in downtown Pasadena (Inland Empire Exh. 2; Tr. 2734). For purposes of clarity, the publisher will continue to be referred to as Pasadena Media. *The Weekly* is sold primarily by subscription with some copies distributed at newsstands with a total circulation of between 21,000 and 29,000 copies. It does not have an editorial page (Tr. 2735-36). *Nine-to-Nine* is a free distribution biweekly shopper without an editorial or op-ed page (Tr. 2735-36), distributed to restaurants, stores, and

office buildings in downtown Pasadena. As of the date of the filing of Inland Empire's direct case, Dr. Sokolow owned 3.17 percent of the Pasadena Media, Inc. stock (Tr. 2891). At the time Dr. Sokolow acquired his management and ownership interests in Pasadena Media, he committed himself to divest those interests upon a grant of Inland Empire's application (Inland Empire Exh. 2; Petition for Leave to Amend and to Withdraw Earlier-Filed Petition, filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984).

226. In addition to Dr. Sokolow, four other limited partners of Inland Empire have acquired interests in Pasadena Media: Jeffrey S. Gordon, Ann B. Roberts, Paul M. Wolff, and Pierce O'Donnell (Inland Empire Exh. 2). Mr. Gordon, a Director of Pasadena Media, acquired 6.34 percent interest on December 30, 1983 (Inland Empire Exh. 2; Tr. 2652, 2876-78). At the time he acquired his interest in Pasadena Media, Mr. Gordon committed himself to divest this interest upon a grant of Inland Empire's application (Inland Empire Exh. 2; Petition for Leave to Amend and to Withdraw Earlier-Filed Petition, filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984).

227. Anne B. Roberts acquired a 3.17 percent ownership interest in Pasadena Media on December 30, 1983 and serves as General Counsel/Secretary and a Director of the corporation (Inland Empire Exh. 2 at 3). Prior to the time she acquired her interest in Pasadena Media, Ms. Roberts made an oral commitment to Mr. Duron and others to divest that interest in the event of the grant of Inland Empire's application (Inland Empire Exh. 2; Tr. 2740-41; Petition for Leave to Amend and to Withdraw Earlier-Filed Petition, filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984). Similarly, Messrs. O'Donnell, Gordon, and Wolff made similar commitments to divest to Ms. Roberts (Tr. 2740-42).

228. Paul M. Wolff acquired a 3.17 percent ownership interest in Pasadena Media on December 30, 1983 (Inland Empire Exh. 2; Tr. 1705, 2652). At the time he acquired his interest in Pasadena Media, Inc., Mr. Wolff committed himself to divest that interest in the event of the grant of Inland Empire's application (Inland Empire Exh. 2; Petition for Leave to Amend and to Withdraw Earlier-Filed Petition, filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984). He confirmed his divestiture commitment with both Mr. O'Donnell and Ms. Roberts prior to acquiring his interest in Pasadena Media (Tr. 1707).

229. Pierce O'Donnell acquired a 19.84 percent ownership interest in Pasadena Media on December 30, 1983 (Inland Empire Exh. 2; Tr. 2652, 2860-61). He also serves as the company's Chairman of the Board of Directors (Inland Empire Exh. 2; Tr. 2861-62). At the time he acquired his interest in Pasadena Media, Mr. O'Donnell committed himself to divest that interest following the grant of Inland Empire's application (Inland Empire Exh. 2; Petition for Leave to Amend and to Withdraw Earlier-Filed Petition, filed by Inland Empire on March 15, 1984, received by *Order*, FCC 84M-2175, released May 7, 1984). In October 1983, Mr. O'Donnell reaffirmed his commitment in conversations with Mr. Duron and Ms. Roberts (Tr. 2865-66, 2871-72, 2874).

230. Subsequent to the B cutoff date in this proceeding, Pierce O'Donnell and Paul M. Wolff became limited partners in California Radio Partners, which on November 23,

1983 filed with the Commission an application for assignment of license for station KNTF-FM in Ontario, California (Inland Empire Exh. 2). At that time, Messrs. O'Donnell and Wolff committed themselves to divest their interests in California Radio Partners upon a grant of Inland Empire's application (Inland Empire Exh. 2; Tr. 1704, 1710, 1713-15, 2856-58; Petition for Leave to Amend filed by Inland Empire on December 21, 1983, received by Order, FCC 84M-839, released February 16, 1984). Although the assignment application was granted, the transaction was never consummated and the Commission's authorization to assign the license expired on January 22, 1985. (See, Petition for Leave to Amend filed by Inland Empire on July 8, 1985, received by Order, FCC 85M-3453, released September 4, 1985.)

#### Conclusions of Law

231. As noted above, Inland Empire is a limited partnership. As of the date the Agreement was signed, applicant represented that it had three general partners with the following partnership interests: David Duron, the managing general partner with 10 percent, Robert Navarro with 6.66 percent, and Alex Tovar with 6.66 percent. Mr. Tovar withdrew as a general partner, an action which was duly noted in a B cutoff date amendment filed by Inland Empire, and Ms. Racho became the new Inland Empire general partner. The fact that the amendment to Inland Empire's Certificate of Formation of Limited Partnership was not recorded with the State of California until after the B cutoff date is of no decisional significance, since the Commission and all parties were timely notified of this change. Furthermore, the compliance or noncompliance with the technical requirements of state law does not govern how the Commission views an applicant's structure for integration purposes. See, *Bradley, Hand, and Triplett*, 89 FCC 2d 657 (Rev. Bd. 1982). Mr. Tovar's withdrawal and the substitution of Ms. Racho for Mr. Tovar is found to have been effective for comparative purposes.

232. According to Section 7(b) of Inland Empire's Partnership Agreement, only one-fifth of each general partner's partnership interest vested as of the date of the Agreement. The remaining four-fifths of each general partner's interest will vest in stages over a four-year period of time, and each stage in the vesting process is dependent upon that general partner's continued employment at the station (SBBLP Exh. 6). Although a general partner can be removed as a general partner only for good cause, such as death, disability, and conviction of a felony, see, Section 12(a) of the Limited Partnership Agreement, he or she can be discharged as an employee by the managing general partner without a showing of good cause (SBBLP Exh. 6; Tr. 2613). The Presiding Judge concludes, therefore, that as of the B cutoff date, the total amount of each general partner's reported interests in the applicant had not vested. Mr. Navarro and Ms. Racho cannot, therefore, be found to have a fully vested interest of 6.66 percent in the applicant. Similarly, Mr. Duron's projected total interest in the applicant is also conditioned on his continued employment at the station. Although he may, as General Manager, be in a more secure position as an employee such a fact does not rule out the possibility that he might have to resign because of some unexpected event. Accordingly, the Presiding Judge concludes that as of the B cutoff date, Mr. Duron's interest in the applicant totaled only 2.0 percent.

233. The Partnership Agreement confers on Mr. Duron the Managing General Partner, significant authority as numerous responsibilities not shared by Mr. Navarro or Ms. Racho. For example, Section 3(b) of the Agreement entrusts the Managing General Partner with the responsibility of identifying those acts deemed necessary and appropriate in furtherance of the partnership's business (SBBLP Exh. 6, Section 3(b)). Subsequent sections of the Agreement<sup>12</sup> spell out in detail the Managing General Partner's duties and responsibilities. Mr. Navarro and Ms. Racho have virtually no voting rights on any matter pertaining to ordinary partnership business, even though together they hold a majority of the general partner's voting interest in the partnership; the day-to-day responsibility of managing the partnership's business is solely the responsibility of Mr. Duron, the Managing General Partner. Furthermore, Mr. Navarro and Ms. Racho are unlikely to oppose Mr. Duron, since the ultimate percentage of their equity interests in the partnership is dependent on their continued employment with the partnership, a matter solely within Mr. Duron's discretion. In view thereof, Mr. Navarro and Ms. Racho cannot be viewed as having any real influence or control over the partnership, since they are dependent on Mr. Duron's continuing goodwill. Their proposal to be integrated into the affairs of the station, therefore, cannot be given comparative credit since the required union of control and managerial and supervisory responsibility is missing. (See, *KIST Corp.*, 10 FCC 2d 288 (1985).) Mr. Duron, however, has control over the affairs of the partnership and, as General Manager, he will have managerial responsibilities entitling Inland Empire to a quantitative integration credit for Mr. Duron.

234. The rights and responsibilities of the limited partners are set forth in Section 6 of the Limited Partnership Agreement (SBBLP Exh. 6, Section 6). In addition they have certain other rights as set forth in Section 4(f), 12(c) and 29. The Agreement does not give the limited partner the right to participate in the day-to-day activities of the station.

235. David Duron, the Managing General Partner, raised the idea of pursuing the license for Channel 30, San Bernardino, with Pierce O'Donnell, a member of the law firm of O'Donnell and Gordon. Mr. O'Donnell brought together the other investors, six of whom are members of the O'Donnell and Gordon law firm. Mr. Duron selected and recruited each of the general partners (Tr. 2603-05; 2684-85, 2721). The limited partners played no part in the selection of Mr. Navarro and Ms. Racho as general partners or the positions they would hold at the station (Tr. 2684-86, 2708). Mr. Duron reviewed and signed the application before it was filed, and he was personally responsible for developing the applicant's proposal in combination with its consulting engineer and communications counsel. The law firm of O'Donnell and Gordon serves as Inland Empire's local counsel and Mr. O'Donnell and Ms. Roberts of that firm, both of whom are limited partners of Inland Empire, have assisted in the preparation of the Limited Partnership Agreement (Tr. 2618) and they also prepared an amendment to the Certificate of Limited Partnership (Tr. 2623). Their participation and that of the firm's appears, however, to have been limited solely to giving legal advice. Legal services alone are not inconsistent with limited partnership status, see *Louisiana Super Communications Ltd. Partnership*, *supra*, and it does not appear from the record that any member

of that firm has made any attempt to control or get involved in the management of the partnership. The fact that the firm maintains Inland Empire's books and records is consistent with its position as local counsel. The Presiding Judge concludes, therefore, that the Limited Partnership Agreement and the actions of its principals demonstrate that Inland Empire's limited partners are truly passive investors, insulated from the everyday activities of the partnership.

235. The quantitative integration credit of 42.8 percent awarded Inland Empire for Mr. Duron's voting interest is qualitatively enhanced by his commitment to move to San Bernardino in the event that Inland Empire is the successful applicant. In addition, it is further enhanced by the fact that Mr. Duron has lived for various periods of time within the city grade contour of Inland Empire's proposed station, and has participated to a limited extent in civic activities in the area. Mr. Duron also has extensive broadcast experience beginning in 1970 which entitles his integration credit to further enhancement.

236. Inland Empire and its principals have no chargeable media interests. All of Inland Empire's general partners are committed to divest any interest held or acquired in any medium of mass communications in the event that Inland Empire's application is granted. Inland Empire's limited partners' media interests are of no decisional significance in view of the finding that Inland Empire's limited partners are properly insulated from the management of the partnership.

#### TELEVISION 30, INC. Findings of Fact

237. TV-30 is a California corporation with both voting and nonvoting stock. As of June 24, 1983, the B cutoff date in this proceeding, the names of its officers and directors, their corporate positions, and the percentage of voting or nonvoting stock held by each of these individuals were as follows:

Name	Position	Director	% of Voting Stock	% of Nonvoting Stock
Rumiko Naito	President	Yes	80%	0%
Howard Teruro	Vice President			
Kubota		No	20%	0%
Leslie T. Hamasaki <sup>13</sup>		Yes	0%	10%
John T. Haneda		Yes	0%	35%
Ruth K. Watanabe <sup>13</sup>	Treasurer	Yes	0%	15%
T. Michael Fehmel <sup>13</sup>	Secretary Vice President	Yes	0%	30%
Richard H. Pae		No	0%	5%

Robert Chen <sup>14</sup>	No	0%	5%
Total		100%	100%

(TV-30 Exh. 1.)

#### Best Practicable Service

##### Rumiko Naito

238. Ms. Naito will be General Manager of the proposed station. It is represented that she will be responsible for all of the major aspects of the station's operations, including the overall supervision of the staff, the hiring and firing of employees, and the decisions as to programming (TV-30 Exh. 1).

239. Ms. Naito has lived within TV-30's city grade contour since 1969 (TV-30 Exh. 2). She lived in the city of Highland, San Bernardino County from 1969 to 1972, and since then has lived in Los Angeles or Beverly Hills, California, both of which are located within the city grade contour of TV-30's proposed station (TV-30 Exh. 2). In the event that TV-30's application is granted, Ms. Naito has indicated that she will move to San Bernardino (TV-30 Exh. 2).

240. Ms. Naito served as Vice President of the Japanese Women's Club of Riverside during 1970 and 1971, spending an average of three hours a week on that activity. At the same time, she was spending an average of approximately five hours each week doing volunteer work connected with the People-to-People Sisters City Project. In addition, she has been a member of the Los Angeles chapter of the Japanese-American Citizen League since 1981, and she devotes an average of one to two hours per week to its activities (TV-30 Exh. 2). From 1970 to 1972, Ms. Naito was an instructor of Japanese floral arranging at Pepperdine University and for a number of private organizations (TV-30 Exh. 2). For the past eight years, Ms. Naito has served as an advisor to the Japanese-American Women's University Club, a nonprofit organization located in Los Angeles, California which grants scholarship awards to encourage individuals to study the culture of Japan. She spends an average of one to two hours a week on this activity (TV-30 Exh. 2).

241. Ms. Naito has worked in the broadcast industry since 1972 in a variety of capacities. She has been an on-the-air radio personality, news broadcaster, as well as a director of public relations (TV-30 Exh. 2). She has also directed television programs (Tr. 1882). In 1976, she became Vice President/Sales Manager of United Television Broadcasting Systems, Inc. (UTB),<sup>15</sup> and in 1982, she was promoted to the position of Executive Vice President of UTB and became a member of its Board of Directors. As Executive Vice President, she works in a liaison capacity with the president of UTB and directs UTB's sales and public relations sections. She also serves as Chief Operating Officer in the president's absence (TV-30 Exh. 2).

242. Ms. Naito is of Japanese ancestry.

##### Howard Kubota

243. Mr. Kubota will be the Business Manager of the proposed station. It is represented that he will be responsible for the financial affairs of the station, including short and long-term business decisions, for supervising the sales



staff, and for the day-to-day business management of the station, and that he will assist Ms. Naito in managing the overall operation of the station and that he would serve as Acting General Manager of the station in her absence (TV-30 Exh. 1).

244. For the past 15 years, Mr. Kubota has lived in San Bernardino County in the city of Redlands, California. If TV-30 is awarded the construction permit, Mr. Kubota will continue to reside at his present address in Redlands (TV-30 Exh. 3).

245. Mr. Kubota is a member of the San Bernardino Community College Affirmative Action Advisory Committee and of the local chapter of the Japanese-American Citizen League. He devotes one to two hours per week to each of these activities. Mr. Kubota was a member of the Rotary Club of San Bernardino from 1971 to 1976 and he resumed his activities with the club in 1983. In 1975, Mr. Kubota received an award as an "Outstanding Educator of America", as well as letters of appreciation from the District Governor of Rotary International for conducting a leadership seminar at the District Assembly and in 1973 for conducting another leadership seminar. Each of these seminars required Mr. Kubota to spend approximately 10 to 15 hours per week for six to eight weeks (TV-30 Exh. 3). In 1974, Mr. Kubota also received a letter of appreciation from the San Bernardino Chamber of Commerce for service he provided to a town meeting for community improvement which required approximately 20 to 30 hours of preparation (TV-30 Exh. 3). In February 1973, he received a recognition award from the National Alliance of Businessmen for creating a program to "hire a veteran" and in March of 1973, Mr. Kubota received special thanks from the Director of Operations of Second Chance, Inc. for providing business seminars for minorities, with an emphasis on the problems of Blacks. He spent 5 to 10 hours a week for several weeks on these activities (TV-30 Exh. 3). In November 1973, he received a recognition award from the National Alliance of Businessmen for creating a program to "hire youth offenders." Mr. Kubota spent approximately 3 to 4 hours a week for about one year on this activity. In 1971, he was selected as a "Top Man of the Year" by the San Bernardino YMCA, and in November 1971, the Mayor of San Bernardino sent a letter of appreciation for service provided to the Casa Ramona Drop-in-Center. Mr. Kubota's activities for Casa Ramona required him to spend 5 to 10 hours a week for several weeks in preparing and presenting seminars to members of the Hispanic community (TV-30 Exh. 3).

246. Mr. Kubota is of Japanese ancestry.

#### Diversification of Ownership of Media

247. With the exception of Richard H. Pae, none of the officers, directors, and owners of voting stock or non-voting stock of TV-30 has any equity or other ownership interest in, or official position with, any facility licensed by the Federal Communications Commission or any other medium of mass communications (TV-30 Exh. 1).

248. Mr. Pae, who owns 5 percent of the nonvoting shares of TV-30 (4.4 percent of the total equity), was Vice President and Editor of the *Dong-A Ilbo*<sup>16</sup> (the *Korean Daily News*) as of the B cutoff date. Mr. Pae has never owned any shares of the paper's stock or served as a director (TV-30 Exh. 1).

#### Conclusions of Law

249. It is undisputed that as of the B cutoff date in proceeding, four of TV-30's five directors and two of four officers were nonvoting shareholders. The four voting shareholders, who hold a combined equity interest in the applicant totalling 79.2 percent, were Ms. Hamada (8.8 percent equity), Mr. Haneda (30.8 percent equity), Ms. Watanabe (13.2 percent equity) and Mr. Fehmel (percent equity), and the two officers were Ms. Watanabe and Mr. Fehmel. The By-laws of TV-30, which dictate the way the corporation will operate (Tr. 1981), provide as follows:

The Board of Directors may delegate the management of the day-to-day operations of the business of the corporation to a management company or another person provided that the business and affairs of the corporation shall be exercised with the ultimate direction of the Board of Directors (Buenavision Exh. 7; Tr. 1952.)<sup>17</sup>

250. In addition to being an officer and director, Fehmel is also TV-30's agent for service of local process and its local counsel. He also prepared the Articles of Incorporation and the By-laws for TV-30 (Buenavision Exh. 7; Tr. 1861-62). Mr. Fehmel also signed both the EEO program for TV-30's application as well as TV-30's original FCC application (Tr. 1914-15). In addition, it was at Mr. Fehmel's suggestion that Ventech become a consultant to TV-30 (Tr. 1870-71), and all prospective shareholders of TV-30 were contacted by Mr. Fehmel or by Mr. Haneda, another nonvoting shareholder as well as a TV-30 director (Tr. 1900-03).

251. Mr. Fehmel contacted Ms. Naito about joining the enterprise just shortly before TV-30's application was filed (Tr. 1907-08). She does not recall providing any information to Mr. Fehmel for the application other than her address (Tr. 1922). Her total financial contribution to TV-30 to date has been \$600.00, and she does not believe that she has any further financial obligation to TV-30 (Tr. 1920). Ms. Naito, who is slated to be the General Manager of the station, has no idea how the station will be financed, since, according to her testimony, no one discussed the financing with her (Tr. 1965). Similarly, Mr. Kubota, another integrated principal, has not prepared or ever seen any revenue or expense projections for the station even though he is the proposed Business Manager of the station (Tr. 2007). Mr. Kubota also believes that he has no further financial liability towards TV-30 other than the cost of his stock (Tr. 1994). He is of the opinion that the financing for the station will come from the nonvoting shareholders (Tr. 2004).

252. The Presiding Judge concludes that TV-30's By-laws, as of the B cutoff date, as well as the activities of Mr. Fehmel and Mr. Haneda, require the finding that the nonvoting shareholders who comprised four out of five directors of TV-30's Board of Directors are in a position to exert considerable control and influence over the affairs of TV-30 and by their past activities have demonstrated a willingness to exert such control. The nonvoting shareholders hold close to 80 percent of the equity of the corporation. Since TV-30 does not intend to integrate anyone of these shareholders into the affairs of the station, at the very most it is entitled to slightly more than a 20 percent quantitative integration credit for its proposal to integrate Ms. Naito and Mr. Kubota.



253. There is no evidence of record that Ms. Naito or Mr. Kubota had signed a stock subscription agreement at the time TV-30's integration proposal was signed (Tr. 1918-19). Therefore, in light of *Houston, supra*, their integration proposals cannot be credited. In the event, however, that this ruling is overturned on appeal, the additional conclusions set forth below are reached.

254. Ms. Naito, who owns 9.6 percent of the equity in TV-30 and 80 percent of the voting stock, has committed herself to work full time at the station as General Manager. She has broadcast related experience and appears willing and able to assume duties at the station which clearly involve managerial responsibility. In addition, Ms. Naito sits on TV-30's Board of Directors, placing her in a position to influence the policy of the station. Ms. Naito has lived in the proposed service area since 1969, and she has engaged in civic activities in the past in the area to a slight to moderate degree.<sup>18</sup> Although Ms. Naito has never worked at a television station, she has been involved in broadcast related activities since 1972, and she continues to serve as a news and special events broadcaster (TV-30 Exh. 2; Tr. 1853-54). In addition, Ms. Naito has indicated that she will move to San Bernardino in the event that TV-30 is the successful applicant. Any quantitative integration credit awarded TV-30 for Ms. Naito's integration pledge would therefore be entitled to further enhancement for her service area residence with slight to moderate civic involvement, extensive broadcast experience, and her intention to relocate to San Bernardino in the event that TV-30 is successful. Mr. Kubota owns 20 percent of TV-30's voting stock. Although his participation in the affairs of TV-30 to date appears to have been minimal, he is clearly qualified to assume the duties of Business Manager at the proposed station. The position of Business Manager is recognized by the Commission's *Policy Statement, supra*, as involving managerial responsibilities, and in the absence of any evidence of record drawing into question his announced intention to devote full time to his duties at the station, TV-30 would be entitled to 2.4 percent quantitative integration credit for Mr. Kubota. Mr. Kubota has lived in San Bernardino County for the past 15 years. Certain claimed civic activities on his part in the San Bernardino area, specifically his involvement with the Academic Senate for the California Community Colleges during 1971-75 as well as faculty representative to the San Bernardino Community College Affirmative Action Advisory Committee, appear to be related to his employment (Tr. 1990, 2014-15), and are, therefore, of no comparative weight. His cognizable civic activities are few. Mr. Kubota's integration proposal would, therefore, be entitled to enhancement for his long-term residence within the service area and to a further, slight degree for his civic activities within that area. Mr. Kubota has no broadcast experience. In the event it is found on appeal that the record demonstrates a reasonable assurance of Ms. Naito and Mr. Kubota's integration commitments, TV-30 would be entitled to a total quantitative integration credit of 12 percent which would be qualitatively enhanced in the manner described above.

255. Ms. Naito is an employee, Director, Vice President, and 2.5 percent shareholder of United Television Broadcasting, Inc. (UTB), which she compared to a small television station (Tr. 1854, 1926, 1950). Mr. Haneda is the Chief Executive Officer of UTB, as well as a director, and owns 43 percent of its stock (Tr. 1950). UTB produces Japanese language programming which is aired by a Los

Angeles television station, and it sells advertising time to local merchants (Tr. 1854-55). It also publishes and distributes in the service area a monthly magazine, *Town Magazine*, which contains a listing of television programs along with reviews of Japanese television and radio programs as well as some English language programs (Tr. 1872-73). Ms. Naito indicated that it was possible that UTB will buy time on TV-30 (Tr. 1934), and that it is conceivable that UTB and TV-30 will sell advertising time to some of the same local merchants. Mr. Haneda did not make a diversification commitment with respect to his interest in UTB, and Ms. Naito's first reference to severing her ties with UTB occurred in TV-30's direct exhibits.

256. As noted above, UTB produces television programs which are carried on a station in the same market as that to be served by TV-30's proposed station, and it also publishes a monthly magazine which is distributed in San Bernardino and its environs. The Presiding Judge concludes, however, that both are of little or no concern under the diversification criterion since the service area is heavily saturated with a wide variety of media. TV-30's shareholders' interests and associations with an entity which provides some programming and publishes a monthly magazine of limited circulation in such a vast market will have little or no effect on the Commission's goals of maximizing available programming service and of preventing undue concentration of economic control. Since UTB is not a licensee, its sale of advertising time to local merchants will not create a conflict of interest.

257. Mr. Pae, a TV-30 nonvoting shareholder, is Vice President and Editor of *Dong-A Ilbo*, a Korean language daily newspaper (TV-30 Exh. 1). He does not have an ownership interest in the newspaper and never served as a director (TV-30 Exh. 1). Mr. Pae also purchases through his company, Korean TV Productions, one hour of television time a week on station KWHY-TV in Los Angeles, California. Mr. Pae is not and has never been a director of TV-30. In addition, the evidence of record fails to disclose that Mr. Pae has or has ever attempted to exert control over the affairs of TV-30. Therefore as an insulated, non-voting shareholder, his interests and associations are found to be of no decisional significance under the diversification criterion.

#### ALL NATIONS CHRISTIAN BROADCASTING, INC.

##### Findings of Fact

258. All Nations is a nonprofit religious corporation (All Nations Exh. 1). The activities and affairs of the corporation are governed by a Board of Directors consisting of the following five members: Edward B. Bass, Oscar Canales, Florentino Garza, Craig R. Lawrence, and F. Patrick Pearce, Jr. (All Nations Exh. 1). The directors are elected by a vote of the Board of Directors and each director has one vote (All Nations Exh. 1).

##### Best Practicable Service

##### Craig R. Lawrence

259. Mr. Lawrence proposes to serve as General Manager of the station and to devote a minimum of 40 hours per week to his duties as General Manager (All Nations Exh. 2). As General Manager, Mr. Lawrence will be re-

sponsible for the overall supervision of the station's operations including the establishment and implementation of the proposed station's policies (All Nations Exh. 2).

260. Mr. Lawrence currently resides in Sioux Falls, South Dakota (All Nations Exh. 2). From May 20, 1982 through July 31, 1982, Mr. Lawrence was a resident of San Bernardino, California, and from August 1, 1982 through August 1, 1983, he resided in Lake Arrowhead, California (All Nations Exh. 2). If the application of All Nations is granted, Mr. Lawrence will move to the San Bernardino, California area (All Nations Exh. 2). He presently intends to reside in Lake Arrowhead, California, which is located within the predicted Grade B contour of All Nations proposed station (All Nations Exh. 7).

261. In May 1970, Mr. Lawrence became News Director of television station KSOO, Sioux Falls, South Dakota and its satellite, KCOO, Aberdeen, South Dakota (All Nations Exh. 2). Mr. Lawrence was promoted to General Manager of KSOO and KCOO in October 1971. The station was sold, subsequently, and from January 1974 through June 1975, Mr. Lawrence served as General Manager of television station KABY, Aberdeen, South Dakota (All Nations Exh. 2). Since that time, Mr. Lawrence has been employed in broadcast advertising and marketing (All Nations Exh. 2).

262. Mr. Lawrence does not claim minority status.

#### F. Patrick Pearce, Jr.

263. Mr. Pearce will serve as Operations Manager of the station and will devote a minimum of 40 hours per week to his duties at the station. As Operations Manager he will be responsible for the station's operations in the areas of programming, production, engineering, and sales (All Nations Exh. 3). He will also supervise all station employees and the station's various departments either directly or through department heads, and he will participate with the General Manager in establishing station programming and other policies (All Nations Exh. 3).

264. Mr. Pearce presently resides in San Bernardino County, California. (See, All Nations Christian Broadcasting, Inc.'s Motion for Leave to Amend, filed by All Nations on February 14, 1986, received by Order, FCC 86M-866, released March 6, 1986.) He has lived there since February 1978 and intends to continue to reside there if All Nations' application is granted (All Nations Exh. 3).

265. Mr. Pearce was employed as an Account Executive by WNDL-FM, Huntsville, Alabama in June and July 1973 (All Nations Exh. 3), and from May 1974 to August 1977, he was employed as an Account Executive for television station WAPI, Channel 13, Birmingham, Alabama. In addition, Mr. Pearce has experience in the fields of marketing, program production, and media production (All Nations Exh. 3 at 3-4). Mr. Pearce is presently employed as Director of the Mass Media Ministry of Campus Crusade (All Nations Exh. 3). He also serves as a voting member of Arrowhead Communications, Inc., a for-profit subsidiary of Campus Crusade (All Nations Exh. 3). In the event that All Nations' application is granted, Mr. Pearce will resign his position as Director of the Mass Media Ministry and his position as a voting member of Arrowhead Communications, Inc. (All Nations Exh. 3).

266. Mr. Pearce does not claim minority status.

#### Edward B. Bass

267. Mr. Bass proposes to serve as Coordinator of Black Programming for the station and he will devote a minimum of 40 hours a week to his duties associated with that position (All Nations Exh. 4). He will also serve as station liaison with the Black community (All Nations Exh. 4; Tr. 1762). In addition, he will participate with the General Manager and Operations Manager in establishing and implementing the station's overall programming and policies (All Nations Exh. 4).

268. Mr. Bass presently resides in Long Beach, California (All Nations Exh. 4). He has resided in Los Angeles or the Los Angeles area since 1963 (All Nations Exh. 4). Mr. Bass intends to maintain his present residence in Long Beach if the All Nations application is granted (All Nations Exh. 4).

269. From July 1968 to January 1973, Mr. Bass served as a member of the Mayor's Community Advisory Committee of the city of Los Angeles (All Nations Exh. 4). From 1964 to 1965, he was a member of the South Central Committee of Aging of the City of Los Angeles (All Nations Exh. 4), and from July 1974 to October 1980, he was Corresponding Secretary for the California State Baptist Convention (All Nations Exh. 4). In addition, Mr. Bass is presently Secretary/Treasurer and Office Manager of the United Benevolent Society of Los Angeles, and a Senior Job Developer-Counselor for the World Christian Training Center Work Experience Program (All Nations Exh. 4). He is also Manager of E. Victor Villa, Inc., a senior citizen's housing project, and a Board member of the South Central Red Cross (All Nations Exh. 4). All of his civic activities have taken place in Los Angeles, California (Tr. 1800).

270. Mr. Bass was host of the Ed Bass Hour, a one-hour program, one night a week on Station KBSA-TV, Guasti, California from June 1975 to February 1977 (All Nations Exh. 4). He also made other appearances on KBSA-TV beginning in 1974 (All Nations Exh. 4). Mr. Bass presently serves as Associate Pastor and Administrative Assistant at Mount Zion Missionary Baptist Church, Los Angeles, California (All Nations Exh. 4). Mr. Bass will not terminate his position at the church, but will devote no more time to his duties there than his commitment to work a minimum of 40 hours a week at the proposed station will allow (All Nations Exh. 4).

271. Mr. Bass is Black (All Nations Exh. 4).

#### Oscar M. Canales

272. Mr. Canales proposes to serve as Coordinator of Programming for the Hispanic community at the station and he will devote a minimum of 40 hours a week to those duties (All Nations Exh. 5). It is represented that his responsibilities will include the development of programming directed to the specific needs, problems, and interests of the Hispanic and Spanish-speaking community (All Nations Exh. 5); that he will serve as liaison between the station and the Hispanic and Spanish-speaking community; that he will supervise the employees directly or indirectly involved in the development and production of Hispanic or Spanish-language programming; and that he will participate with the General Manager and Operations Manager in establishing overall station programming and policies (All Nations Exh. 5).

273. Mr. Canales currently resides in Dolton, Illinois (All Nations Exh. 5). If All Nations' application is granted, Mr. Canales has indicated that he will move to San Bernardino, California (All Nations Exh. 5; Tr. 1817).

274. From 1964 to 1966 Mr. Canales was a program host and sales person at WYCA-FM, Hammond, Indiana (All Nations Exh. 5). Mr. Canales was also an independent radio producer for WJOB, Hammond, Indiana from 1966 to 1971, and an independent program producer for WLTH, Gary, Indiana and WCIU-TV, Chicago, Illinois (All Nations Exh. 5). He also worked with other independent producers at WOJO-FM, Evanston, Illinois and WSNS-TV, Chicago, Illinois (All Nations Exh. 5). On April 1, 1977, Mr. Canales became employed by WLNK, Lansing, Illinois, as Spanish Program Director. By an amendment filed on December 13, 1985, and received by Order, FCC 86M-763, released February 28, 1986, All Nations informed the Commission that Mr. Canales is no longer employed by WLNK, Lansing, Michigan. Mr. Canales is now producing a Spanish language television program for Station WCFC-TV, Channel 38, Chicago, Illinois and he has reaffirmed his intention to resign from his current employment in order to work full time at the proposed station. (See, "All Nation's Christian Broadcasting, Inc.'s Petition for Leave to Amend", filed by All Nations on July 21, 1987, received by Order, FCC 87M-2212, released September 16, 1987.)

275. Mr. Canales is Hispanic (All Nations Exh. 5).

#### Florentino Garza

276. As a member of All Nations' Board of Directors, Mr. Garza will regularly attend and participate in meetings of the All Nations Board of Directors. It is represented that he will be involved in establishing overall station policies, particularly those policies dealing with station programming (All Nations Exh. 6).

277. Mr. Garza is Hispanic, and he has resided in San Bernardino, California continuously since 1963 (All Nations Exh. 6).

#### Diversification of Ownership of Media

278. All Nations has no ownership interest or any other interest of any kind in any other broadcast station or application, or in any other medium of mass communications (All Nations Exh. 1). Messrs. Lawrence, Pearce, Canales and Garza have no ownership interest in any radio or television station, cable television system, or any other medium of mass communications (All Nations Exhs. 2, 3, 4, 5, 6).

#### Conclusions of Law

279. As a nonprofit corporation, All Nations' Board of Directors governs all of its activities and affairs (All Nations Exh. 1). Each director has one vote, and a majority vote of the directors removes a director (All Nations Exh. 1; Tr. 1750-51). Messrs. Lawrence, Pearce, Canales, Bass, and Garza comprise All Nations' Board of Directors, and its proposal for Channel 30 calls for the integration on a full-time basis of four of its five directors; the lone exception being Mr. Garza who will not hold a management position at the station on a day-to-day basis (All Nations

Exh. 6; Tr. 1749). At the very most, therefore, All Nations is entitled to an 80 percent full-time quantitative integration credit.

280. Mr. Lawrence and Mr. Pearce will serve as full-time General Manager and Operations Manager, respectively. The evidence of record indicates that as members of All Nations' Board of Directors and in their respective roles at the station, both will have policy making and managerial responsibilities. All Nations is, therefore, entitled to a full-time quantitative integration credit for both of these men of 40 percent.

281. Messrs. Bass and Canales, as directors, will also have input in setting policy for the station (Tr. 1790). Less clear is whether or not either person will have any managerial or supervisory responsibilities. Mr. Bass, as Coordinator for Black Programming, views his role at the station as liaison to the Black community (Tr. 1796) and his principal responsibility at the station as developing programming directed to the Black community (Tr. 1788). He indicated that he did not know whether or not he would present any programming personally (Tr. 1792). Mr. Pearce, the Operations Manager, however, would have to approve any programming directed to the Black community (Tr. 1797). Mr. Bass "thinks" that he could have a supervisory role over the station's entertainment aimed at the Black community (Tr. 1795), but that he will have the authority to fire those individuals assisting him in developing programming (Tr. 1799).

282. It appears from the record, including the testimony of Mr. Pearce (Tr. 1768-70), that Mr. Bass' role at the station would be, essentially, an advisory one and non-managerial, and would not involve day-to-day participation in station activities on his part. Lending further weight to this conclusion is Mr. Bass' testimony to the effect that his principal home will remain in North Long Beach, California, and not in San Bernardino. Clearly, Mr. Bass views his association with the San Bernardino area and his commitment to the station as secondary to his home in Long Beach and his activities in the Los Angeles area which he has indicated he has no intention of abandoning in the event that All Nations is the chosen licensee. Accordingly, the Presiding Judge finds that All Nations is not entitled to any integration credit for Mr. Bass since the record does not support the conclusion that he will occupy a managerial position at the station on a full-time, day-to-day basis. (See, *The New Continental Broadcasting Company*, 89 FCC 2d 631 (Rev. Bd. 1982).)

283. Mr. Canales is the proposed Coordinator of Programming for the Hispanic community. He described himself as being in charge of the Spanish language operation at the station, producing the programs and supervising the personnel working on these programs (Tr. 1809); and that he would report to Mr. Lawrence and Mr. Pearce (Tr. 1809). He was uncertain as to whether he would act as host for any of the Spanish language programs (Tr. 1818). Mr. Canales summed up his role at the station as being certain that the needs of the Hispanic community are met (Tr. 1819). Mr. Canales' testimony as to the scope of his role at the station differs in significant ways from that of the Messrs. Lawrence and Pearce. Mr. Canales described himself as being in charge of Spanish language programming. Mr. Lawrence indicated that with respect to the operations at the station that he would make the final decision; and that the other directors' input would be essentially advisory (Tr. 1721). He identified Mr. Pearce as supervising the programming department and coordinating

programming operations with him (Tr. 1723), and that Mr. Pearce would be assisted in that position by Mr. Canales and Mr. Bass (Tr. 1722-23). Mr. Pearce, in his testimony, described himself as Mr. Bass and Mr. Canales' supervisor (Tr. 1755), and that he would make the final decision in the programming area subject to review by Mr. Lawrence (Tr. 1757-59). He specifically indicated that Mr. Canales would not be in charge of Spanish language programming, but that he would "...help in that area" (Tr. 1759-60, 1768). The Presiding Judge concludes, therefore, that Mr. Canales' view of his role at the station is not shared by his supervisors, and that they view his role at the station as similar to that of Mr. Bass; that is, essentially an advisory one which will provide them with input as to programming directed to the Hispanic community. The Presiding Judge concludes, therefore, that Mr. Canales will not have a managerial role at the station, and that he will serve in essentially an advisory role at the station; and that actual management responsibility at the station in the area of Spanish language programming will rest with the Messrs. Lawrence and Pearce. Accordingly, All Nations is not entitled to any integration credit for its proposal to integrate Mr. Canales into the affairs of the station.

284. The Presiding Judge concludes that All Nations is entitled to a 40 percent full-time quantitative integration credit for its proposal to integrate the Messrs. Lawrence and Pearce into the affairs of the station on a full-time basis. The quantitative integration credit awarded All Nations is qualitatively enhanced by the fact that Mr. Pearce is a resident of San Bernardino, and by Mr. Lawrence's short-term residence in San Bernardino between May 1982 and July 1982. In addition, Mr. Lawrence has indicated that he will move back to San Bernardino in the event that All Nations is the winning applicant. None of the integrated principals has any civic involvement in the San Bernardino area. However, Mr. Lawrence has extensive broadcast experience, qualifying his integration proposal to further enhancement. Mr. Pearce's broadcast experience is for the most part nonmanagerial and limited to advertising and sales and is of little or no decisional significance.

285. As of the so-called B cutoff date, Messrs. Lawrence and Pearce both served as directors and held significant managerial positions with the Mass Media Ministry of the Campus Crusade for Christ International, Inc. (Campus Crusade). Neither one of these individuals, however, was on the Board of Campus Crusade. The Mass Media Ministry is in the business of producing and distributing television programming as well as a monthly newsletter entitled "Worldwide Challenge" with a total circulation of 115,000 to donors to the Ministry (Tr. 1747, 1775), and a magazine entitled "Athletes in Action Sports Magazine" distributed all over the country with a circulation of less than 10,000 (Tr. 1747-48). In addition, Mr. Lawrence and Mr. Pearce are voting members of Campus Crusade's for profit subsidiary, Arrowhead Communications, Inc. (Arrowhead), but neither one has an ownership interest in Arrowhead or serves as an officer of the company (All Nations Exhs. 2, 3; Tr. 1737-38). Arrowhead produces and distributes a television series (All Nations Exh. 3; Tr. 1729-30).

286. The Mass Media Ministry is not a broadcaster, but a producer and distributor of television programming as well as two magazines which are circulated nationally. As the figures listed above indicate, both magazines have a very limited distribution nation-wide and, therefore, reach a relatively small number of persons in the San Bernar-

dino area. In addition, a production company is not normally considered to be a medium of mass communications in the absence of a showing, which has not been made here, that the association with the production company will undermine the objectives of the Commission's diversification policy, namely, the maximization of programming services and viewpoints as well as the prevention of undue concentration of economic power. (See, *Morris, Pierce & Pierce, supra.*) The association of Messrs. Lawrence and Pearce with the Mass Media Ministry, therefore, is found to be of no decisional significance under the diversification criterion. (See, *Morris, Pierce & Pierce, supra.*)

## RELIGIOUS BROADCASTING NETWORK

### Findings of Fact

287. RBN is a California nonprofit, nonstock corporation. It is governed by a five person Board of Directors, each of whom has one vote. The directors are: Roy Kenneth Foreman, President; Douglas Shaw, Vice President; Nancy J. Horton, Secretary/Treasurer; David J. Jaime; and Lorita F. Stewart (RBN Exh. 1).

### Best Practicable Service

#### Roy Kenneth Foreman

288. Mr. Foreman will be full-time General Manager of the proposed station, working a minimum of 40 hours a week. As General Manager, Mr. Foreman will be Chief Executive Officer of the station, working with the other members of the Board of Directors to coordinate and supervise all facets of the day-to-day operation of the station. There will be weekly Board of Directors' meetings to establish, review, and coordinate basic station policies. It will then be Mr. Foreman's responsibility to assure that these policies are implemented by the respective departments of the station's staff (RBN Exh. 2). In the event that RBN receives the permit, Mr. Foreman will resign from his present duties and commitments and work full time for RBN's station (RBN Exh. 2).

289. Mr. Foreman presently resides in San Jose, California (RBN Exh. 2 at 1). He has pledged to move to San Bernardino, California in order to meet his integration commitment to the station (RBN Exh. 2).

290. Mr. Foreman has appeared on radio and television, and has produced programs aired on these broadcast facilities. In addition, he has been involved in obtaining and presenting religious programming for carriage on cable television systems serving the San Jose, California area (RBN Exh. 2).

291. Mr. Foreman does not claim minority status.

#### Douglas Shaw

291. Mr. Shaw will be the full-time Sales Manager, working a minimum of 40 hours a week. His duties will include the supervision of the sales and marketing staff of the station. He will also participate with other members of the Board of Directors in establishing the basic policies of the station. Mr. Shaw will not be involved in any other business activities, and he will establish his primary residence in San Bernardino, California (RBN Exh. 3).

292. Mr. Shaw has appeared as a guest on national religious networks, and he has presented editorials on a cable television show (RBN Exh. 3).

293. Mr. Shaw is Asian.

**Nancy J. Horton**

294. It is represented that Ms. Horton will be the full-time Business Manager of the station, working a minimum of 40 hours a week; that her duties will include responsibility for all of the office, business, financial and accounting functions of the station; and that she will supervise the station staff members who perform these functions. In addition, Ms. Horton will participate with the other members of the Board of Directors in establishing the basic policies of the station (RBN Exh. 4).

295. Ms. Horton presently lives in San Jose, California. In order to fulfill her commitment to the station, Ms. Horton will make additional housing arrangements in San Bernardino, commuting to San Jose on the weekends (RBN Exh. 4).

296. Ms. Horton is a full-time business manager for a family business. In the event that RBN is the successful applicant, she will relinquish this position, and any time spent on the family business would be in addition to her 40-hour per week commitment to RBN (RBN Exh. 4).

297. Ms. Horton does not claim any past broadcast experience or minority status.

**David J. Jaime**

298. Mr. Jaime is the proposed full-time Program Director for RBN. He will work a minimum of 40 hours per week. It is represented that as Program Director, he will have overall responsibility for obtaining, producing and scheduling the station's programming; and that he will supervise the programming and related technical staff of the station. In the area of public affairs programming, it is proposed that he will work with Lorita F. Stewart, who will be Director of Public and Community Affairs. Mr. Jaime will participate with the other members of the Board of Directors in establishing the basic policies of the station (RBN Exh. 5).

299. In the event that RBN is the successful applicant for the Channel 30 broadcast facility, Mr. Jaime will establish his residence in San Bernardino, California (RBN Exh. 5).

300. Mr. Jaime has worked as a production assistant for a religious group and currently supervises the production of cable programs (RBN Exh. 5). He has pledged to resign his present position in order to meet his commitment to Channel 30 (RBN Exh. 5).

301. Mr. Jaime is Hispanic.

**Lorita F. Stewart**

302. In the event that RBN receives the permit, Ms. Stewart will be the full-time Director of Public and Community Affairs, working a minimum of 40 hours per week. It is represented that she will have responsibility for developing and facilitating the public affairs programming for the station, coordinating her efforts with the Program Director, and that she will have responsibility for developing and coordinating station participation in community affairs such as the activities of charitable organizations, schools, and minority and disadvantaged groups. In addition, she will supervise various staff members at the station employed in implementing these programs and other station activities which she develops and for which she is

responsible. Ms. Stewart will participate with other members of the Board of Directors in establishing the basic policies of the station (RBN Exh. 6).

303. In the event that RBN's application is granted, Ms. Stewart will resign from her present employment and establish residence in San Bernardino (RBN Exh. 6).

304. Ms. Stewart claims no prior broadcast experience or civic involvement.

305. Ms. Stewart is Black.

**Diversification of Ownership of Media**

306. Neither RBN nor any of its directors has any ownership interest in any broadcast station or other medium of mass communications. R. Kenneth Foreman is an officer and director of the Cathedral of Faith. By amendments filed on March 11, 1987, April 28, 1987 and June 26, 1987, received by *Orders*, FCC 87M-2213, released September 16, 1987, FCC 87M-2214, released September 16, 1987, and FCC 87M-2215, released September 16, 1987, respectively, it has been reported that the assignment of television station KLXV-TV, San Jose, California from Donald B. Thompson to Cathedral of Faith was sought, approved and consummated. Mr. Foreman made a contemporaneous commitment to resign from his positions with the Cathedral of Faith.

**Conclusions of Law**

307. As noted above, RBN is a nonprofit, nonstock corporation. Since it lacks owners in the traditional sense, the Commission looks to its Board of Directors as the integral group for determining the applicant's entitlement to integration credit. (*See, Farragut Television Corp.*, 5 FCC 2d 93 (Rev. Bd. 1966).) In this instance, RBN has a five-member Board of Directors. It proposes to integrate all five members into the affairs of its proposed station on a full-time basis, all of whom will participate in a weekly directors' meeting at which time policies will be set for all aspects of the station's operations (Tr. 420-21, 424, 385). RBN claims, on this basis, a 100 percent full-time quantitative integration credit.

308. As to each director's specific duties at the station, Mr. Foreman will serve as General Manager, overseeing all facets of the station's operations and making sure that the station's policies as implemented by the Board are carried out (Tr. 328), and Mr. Shaw, another director, will serve as Sales Manager. According to Mr. Shaw's testimony, he will be involved in supervising the station's sales and marketing staffs as well as being actively involved in promotions, client relations, contract negotiations and anything relating to the sales image of the station (Tr. 384). The Commission has recognized both positions as having managerial responsibilities, *see, Policy Statement, supra*, and the witnesses' grasp and detailed explanation of their proposed duties at the station supports RBN's contention that they will both operate as managers with the inclination and opportunity to implement station policy. RBN's remaining directors are slated to occupy the following positions: Ms. Horton will serve as Business Manager; Mr. Jaime as Program Director; and Ms. Stewart as Director of Public and Community Affairs.

309. Ms. Horton testified that as Business Manager she will have total responsibility for all accounting functions, and that she will oversee a staff of about three persons,

including an office manager; and that as the station grows in size, her staff will increase (Tr. 423-24). In order to meet this commitment, Ms. Horton will relinquish most of her duties connected with the family business which will be assumed by another person (Tr. 424). However, she will continue to oversee the company's financial statements (RBN Exh. 4; Tr. 427). Ms. Horton presently lives in San Jose, California, and she intends to continue to spend part of her time there, generally on the weekend (Tr. 425). She will commute most likely by air (Tr. 425-26) between San Jose and San Bernardino where she will maintain another residence (Tr. 426).

310. There is no evidence of record which calls into question Ms. Horton's commitment to work 40 hours a week at the station in San Bernardino or her ability to assume these duties. As noted above, she is presently performing similar duties for the family business and she is fully prepared to commute between San Jose and San Bernardino in order to carry out her duties at the station.

311. Mr. Jaime, as Program Director, will be responsible for scheduling, producing and obtaining programming for Channel 30 (Tr. 438). He envisions eventually supervising a staff composed of operators, cameramen, engineers and soundmen (Tr. 438-39). According to Mr. Jaime he will be working with Ms. Stewart, another RBN director, in the programming area. Ms. Stewart will go out into the community looking for persons to appear on RBN's programs and she will also develop ideas for programming content (Tr. 444). Mr. Jaime and Ms. Stewart will together discuss the format for these programs (Tr. 444). The Presiding Judge concludes that RBN is entitled to an additional integration credit for Mr. Jaime who, the evidence demonstrates, will assume managerial responsibilities at the station and who will be in a position to implement the station's policies.

312. Ms. Stewart, as a member of RBN's Board of Directors, will have some input into setting station policy. Her description of her duties at the station indicates, however, that she will not be in a position to implement those policies. Ms. Stewart envisions herself as a member of the staff, in a clearly subordinate position to Mr. Jaime (Tr. 456-57). Her duties, as she described them, are more in the nature of a typical news or public affairs employee with public relations responsibilities (Tr. 452-53, 461). It is noted that Ms. Stewart specifically testified that she will not supervise any other person at the station (Tr. 455). The Presiding Judge finds, therefore, that RBN is not entitled to an integration credit for Ms. Stewart since she will not hold a supervisory or managerial position at RBN's proposed station on a day-to-day basis. A quantitative integration credit of 80 percent has, however, been demonstrated as warranted, and a credit in that amount will be awarded RBN for its proposal to integrate Messrs. Foreman, Shaw and Jaime and Ms. Horton into the affairs of the proposed station.

313. None of RBN's proposed integrated principals currently reside in the San Bernardino area, and none of them have been involved in civic activities in the proposed service area, with the exception of Mr. Shaw's consulting work for a church in Covina, California. All of the integrated principals have, however, indicated that they intend to move to the San Bernardino area in the event that RBN is the successful applicant. Mr. Shaw will move to the city of San Bernardino itself (Tr. 418) and Messrs. Foreman and Jaime will relocate to a point somewhere in the San Bernardino area (Tr. 331, 440). Ms. Horton will

maintain a residence in the San Bernardino area (Tr. 425), in addition to her home in San Jose, California. Reverend Foreman has been involved for some time in the production of television programming and Mr. Shaw in marketing television programs to cable systems (Tr. 397). Mr. Jaime works as a program director, scheduling programs as well as supervising the production of programming for cable casting (RBN Exh. 5; Tr. 436-37). Ms. Horton has no employment history with the broadcast industry. Accordingly, RBN's quantitative integration credit of 80 percent is qualitatively enhanced by the integrated principals' intention to move to San Bernardino or the San Bernardino area and Mr. Jaime's past broadcast experience. Reverend Foreman and Mr. Shaw's broadcast-related experience is not of the type to entitle RBN's quantitative integration credit to further enhancement.

314. Mr. Foreman is the senior pastor, an officer and a director of the Cathedral of Faith and he bears overall responsibility for all of that entity's activities. On January 27, 1984, Mr. Foreman negotiated and signed on behalf of the Cathedral of Faith, a program agreement with Donald B. Thompson, the permittee of a UHF television station on Channel 65 in San Jose, California (Tr. 337, 346, 470). The agreement commits the Cathedral of Faith to provide a minimum of 12 hours of programming each day and to pay all operating expenses for the station (Tr. 338, 346). Programming time beyond the 12-hour period between 11 a.m. and 11 p.m. may be made available to the Cathedral of Faith (Tr. 472). RBN amended its application to reflect the agreement on February 24, 1984 (Tr. 318). Cathedral of Faith also owns certain media properties; the television show "Kenny Foreman Presents Abundant Living" (Tr. 339); and two additional programs, namely, "Behind the Scenes" and "Your Local Minister" which are produced by the Cathedral of Faith and are carried on cable television systems in the San Jose, California area (Tr. 326-27, 330-31, 340). Mr. Shaw and Mr. Jaime are also both associated with the Cathedral of Faith. Dr. Shaw is engaged in independent sales and the marketing of cable programs for the Cathedral of Faith and for the Christian Communications Network (Tr. 382-83), and Mr. Jaime schedules programming and supervises the production of programming for cable casting (RBN Exh. 5; Tr. 436-37).

315. RBN's amendment filed March 2, 1984, reporting the agreement entered into on January 27, 1984 between the Cathedral of Faith and UHF station Channel 65, San Jose, California, contained a commitment from Reverend Foreman that he would resign his position with the Cathedral of Faith in the event that RBN is the successful applicant (RBN Exh. 2; Tr. 326, 358, 372-75). The diversification commitment is found to be timely and RBN will not receive a diversification demerit as a result of this agreement. Although Reverend Foreman testified that he formed his intention to resign from the Cathedral of Faith before RBN's application was filed (Tr. 318), there was no written notification of this intention prior to the B cutoff date in this proceeding. Therefore, Reverend Foreman's position as an officer and a member of the Board of Directors of the Cathedral of Faith must be considered under the diversification criterion. The evidence of record, however, fails to disclose that the programs produced by the Cathedral of Faith are extensively viewed in the San Bernardino area, and the record is otherwise devoid of any evidence indicating that Mr. Foreman's involvement with an organization which produces and distributes religious programming undermines in any material way the



objectives of the Commission's diversification policy. (See, *Pittsfield Community Television Association*, 94 FCC 2d 1320 (Rev. Bd. 1983).) The Presiding Judge concludes therefore that the Reverend Foreman's association with the Cathedral of Faith is of no comparative significance. Similarly, Messrs. Shaw and Jaime's associations with the Cathedral of Faith do not involve either individual in a decision making role, and their positions with the Cathedral of Faith are also found to be of no significance under the diversification criterion.

#### ULTIMATE CONCLUSIONS

316. Based on the conclusions reached above, the Presiding Judge makes the ultimate conclusion that of all of the qualified applicants for the Channel 30 facility in San Bernardino, California, the proposal of Channel 30 would best serve the public interest.

317. Channel 30 will integrate 85.7 percent of its ownership into the management of the proposed station on a full-time basis, followed closely by RBN's full-time quantitative integration credit of 80 percent. SSP is a distant third with a 51 percent full-time quantitative integration credit. The two leading contenders, Channel 30 and RBN, have no demerits under the diversification criterion. Both, therefore, stand on an equal footing with respect to that part of the comparative process. The decision to award Channel 30 the permit for the San Bernardino facility rests, therefore, on an evaluation of their entitlements under the best practicable service criterion. Although the difference between the percentages of integrated ownership between Channel 30 and RBN is only 5.7 percentage points, the qualitative enhancements to which Channel 30's integration credit is entitled warrants awarding it a moderate preference over RBN under that criterion. All of Channel 30's integrated principals are long-term residents of the San Bernardino area with slight civic involvement in the case of two of these principals and a moderate degree of involvement in civic affairs in the case of the third; whereas none of RBN's principals are residents of the San Bernardino area and none, with the exception of Mr. Shaw who has been involved to only a very limited extent, have had any civic involvement in RBN's proposed service area. Although RBN's principals have indicated that they intend to move to the San Bernardino area in the event that RBN receives the permit, this factor is of minor significance when compared to all three of Channel 30's integrated principals' many years of residence within the proposed service area with civic involvement. The additional, very slight qualitative integration credit to which RBN is entitled for Mr. Jaime's past broadcast experience does not tip the comparative balance in RBN's favor.

318. The result reached here would be the same if the female and minority preferences were taken into consideration in evaluating these two applicants. All three of Channel 30's integrated principals are females and one is a member of a minority group. Out of its four integrated principals, RBN has one that is a female and two that are members of minority groups. Channel 30's 85.7 percent local ownership with all female integrated principals would clearly outweigh RBN's 40 percent minority ownership with one female. (See, *Radio Jonesboro, Inc.*, 100 FCC 2d 941 (1985).)

#### RULINGS

319. IT IS ORDERED that the record in the above-entitled proceeding IS REOPENED for the sole purpose of admitting into the record as Good News Broadcasting Network Exhibit No. 5 the affidavit of Rebecca Ekizian dated July 6, 1984 attached to a letter dated July 17, 1984 from Carl J. Fielstra filed with this Office on July 17, 1984; and the record IS CLOSED.

320. IT IS FURTHER ORDERED that the Petition for Leave to File Late Pleading filed by Buenavision Broadcasters on March 20, 1986, the Motion for Leave to File Supplement to Reply to Findings of Fact and Conclusions of Law, filed by Solano Broadcasting Limited on June 3, 1986, the Motion for Leave to File Supplement filed by Inland Empire Television on July 25, 1986, and the Motion for Leave to File Supplement filed by Inland Empire Television on March 18, 1987 ARE GRANTED.

321. IT IS FURTHER ORDERED that the Petition for Leave to Amend filed by Jose M. Oti d/b/a Sandino Telecasters on August 2, 1984 IS DENIED.

322. IT IS FURTHER ORDERED that the Motion to Strike Solano Broadcasting Limited's Integration Proposal, filed by Television 30, Inc. on November 22, 1983 IS DENIED on the basis that the integration statement as supplemented by the information contained in Solano Broadcasting Limited's "Opposition to Motion to Strike" filed on December 2, 1983 is reasonably complete and in substantial compliance with the Presiding Judge's order.

323. IT IS FURTHER ORDERED that the application of Crocker Communications Corporation (MM Docket No. 83-918, File No. BPCT-830506KQ) IS DISMISSED for failure to prosecute its application; and that the Request for Expedited Action filed by Crocker Communications Corporation and Jose M. Oti d/b/a Sandino Telecasters filed on May 14, 1984 and the Motion to Strike T.V. 30's Comments on Crocker Communications Corporation's Integration Proposal, filed by Crocker Communications Corporation on December 13, 1983 ARE DISMISSED AS MOOT.

324. IT IS FURTHER ORDERED that San Bernardino Broadcasting Limited Partnership and Jose M. Oti d/b/a Sandino Telecasters ARE FOUND NOT TO BE QUALIFIED to be licensees of the Federal Communications Commission and their applications (MM Docket No. 83-925, File No. BPCT-830506KX) and (MM Docket No. 83-921, File No. 830506KT) respectively, ARE DISMISSED.

325. AND IT IS FURTHER ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Commission's Rules, 47 C.F.R. 1.276, the application of Channel 30, Inc. (MM Docket No. 83-930, File No. BPCT-830506LS) for a construction permit for a new commercial television station to operate on Channel 30, San Bernardino, California IS GRANTED, and the applications of Religious Broadcasting Network (MM Docket No. 83-911, File No. BPCT-830505KV), Solano Broadcasting Limited (MM Docket No. 83-912, File No. BPCT-830506KK), Charles E. Walker, et al. d/b/a A&R Broadcasting Company, A Limited Partnership (MM Docket No. 83-914, File No. BPCT-830506KM), H. Frank Dominquez, et al d/b/a Buenavision Broadcasters (MM Docket No. 83-915, File No. BPCT-830506KN), Sandra S. Phillips and the ARW Company d/b/a SSP Broadcasting,



A Limited Partnership (MM Docket No. 83-916, File No. BPCT-830506KO), Good News Broadcasting Network (MM Docket No. 83-919, File No. BPCT-830506KR), Inland Empire Television (MM Docket No. 83-922, File No. BPCT-830506KU), Television 30, Inc. (MM Docket No. 83-923, File No. BPCT-830506KV), and All Nations Christian Broadcasting, Inc. (MM Docket No. 83-928, File No. BPCT-830506LA) ARE DENIED.<sup>19</sup>

#### FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Gonzalez  
Administrative Law Judge

#### FOOTNOTES

<sup>1</sup> Twenty-five other applications which were originally designated for hearing were dismissed. *See, Order*, FCC 83M-4753, released December 19, 1983; *Order*, FCC 83M-4754, released December 19, 1983; *Order*, FCC 83M-4755, released December 19, 1983; *Order*, FCC 84M-1962, released April 25, 1984; *Order*, FCC 84M-2252, released May 11, 1984; *Order*, FCC 84M-2405, released May 22, 1984; *Order*, FCC 84M-2535, released June 1, 1984; *Order*, FCC 84M-3484, released August 10, 1984; and *Order*, FCC 84M-4235, released October 2, 1984.

<sup>2</sup> Summary Decision on this issue was granted in Solano's favor by *Memorandum Opinion and Order*, FCC 84M-1422, released March 21, 1984.

<sup>3</sup> Summary Decision on this issue was granted in Sandino's favor by oral ruling on the record on March 20, 1985 (Tr. 3213). (*See, Order*, FCC 85M-1239, released March 25, 1985.)

<sup>4</sup> The following figures are the percent figures as represented by Channel 30's amendment received by *Order* of the Presiding Judge released on July 3, 1986 (FCC 86M-2172).

<sup>5</sup> Sandino's FCC Form 301 indicated that although at the time of filing, applicant was a single individual, it intended to form a corporate entity in which he will be the sole officer, director and 100 percent shareholder.

<sup>6</sup> CCC was a corporate applicant with four shareholders: Frankie Crocker, 50 percent; Anthony Scotti, 22.5 percent; Benjamin Scotti, 22.5 percent; and George Back, 5 percent.

<sup>7</sup> The following figures are the current figures as reported by SBBLP's amendment received by *Order* of the Presiding Judge released on November 7, 1985 (FCC 85M-4390).

<sup>8</sup> Anacortes, Washington is in the Seattle-Tacoma television market, and is located approximately 1,000 air miles from San Bernardino, California (SBBLP Exh. 7).

<sup>9</sup> Messrs. Pattison and Mendoza and Ms. Verches in December 1983, and Mr. Garcia in March 1984 (Tr. 558-59, 655, 744, 813).

<sup>10</sup> Interests have been rounded off, thus totals do not equal 100 percent (A&R Exh. 1).

<sup>11</sup> Provision #18: The limited partner, without the concurrence of the General Partner may vote (1) to amend the limited partnership agreement (2) dissolve the partnership (3) remove the General Partner and elect a new general partner and (4) approve or disapprove the sale of all of the assets of the partnership. (SSP Exh. 6).

<sup>12</sup> *See*, Sections 4(a), (d), (e), (f), (g); 8(b), (c); 10(a), (c), (e); 11; 13(a), (b), (c)(iii), (e)(i); 17(a)(ii), (c), (f); 18(a), (b); and 29.

<sup>13</sup> Mr. Hamasaki, Mr. Fehmel and Ms. Watanabe were removed from the Board of Directors on July 23, 1983 (Tr. 1971). Ms. Naito is now Treasurer and Mr. Kubota assumed the position of Secretary. Ms. Naito and Mr. Kubota are the only directors and officers of TV-30 (Tr. 1971).

<sup>14</sup> Mr. Chen withdrew from TV-30 on the B cutoff date and Mr. Kubota acquired his 5 percent nonvoting interest in TV-30 (TV-30 Ex. 1; Tr. 1948).

<sup>15</sup> UTB is engaged in obtaining and producing Japanese-language television programming and news, and it purchases broadcast time on television stations serving the greater Los Angeles area. UTB itself has no television license, and is dependent on time purchased from local television stations. UTB purchases approximately seven hours of program time each week, and fills about 50 minutes of that time with programs that it has produced (TV-30 Exh. 1; Tr. 1978).

<sup>16</sup> *Dong-A-Ilbo* is published daily, except Sundays, and has a circulation of approximately 4,000. The exclusive distribution area of the *Dong-A-Ilbo* is Los Angeles County, and the paper is not distributed in the city or county of San Bernardino. The *Dong-A-Ilbo* publishes no editorials and carries primary international news. There are two other Korean-language dailies in the greater Los Angeles area. The *Hankook Ilbo* is published daily, seven days a week, and has a circulation of approximately 40,000. The *Joong-Ang Ilbo* is published seven days a week and has a circulation of approximately 10,000 in the greater Los Angeles/Southern California area. In addition, there are approximately 14 to 15 Korean-language weekly newspapers serving the greater Los Angeles area. "Statement Regarding Circulation of the *Dong-A-Ilbo* and of other Korean-Language Newspapers in the Greater Los Angeles Area", June 4, 1984.

<sup>17</sup> An amendment dated February 27, 1984 modified TV-30's management so that its nonvoting shareholders would no longer serve as officers and directors (Tr. 1947-48).

<sup>18</sup> Ms. Naito claims credit for teaching a course in flower arranging at Pepperdine University. It appears from the record, however, that she was reimbursed for this activity.

<sup>19</sup> In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).



Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket Nos. 83-911  
*et al.*

In re Applications of

RELIGIOUS  
BROADCASTING  
NETWORK  
San Bernardino, California

*et al.*

For Construction Permit for a  
New Television Station  
San Bernardino, California

#### Appearances

Morton L. Berfield and Roy W. Boyce, on behalf of Religious Broadcasting Network; Michael H. Rosenbloom, Richard H. Waysdorf, and Rebecca L. Dorch, on behalf of Solano Broadcasting Limited; Thomas A. Hart, Jr. and Frederick W. Chockley, on behalf of A&R Broadcasting Company, A Limited Partnership; J. Geoffrey Bentley and Geraldine M. Carr, on behalf of Buenavision Broadcasters; John Wells King, James E. Dunstan, and Melodie A. Virtue, on behalf of SSP Broadcasting, A Limited Partnership; James A. Gammon and Diane H. Ming, on behalf of Good News Broadcasting Network; William M. Barnard, James K. Edmundson, and Mark Van Berg, on behalf of Sandino Telecasters; Robert A. Beizer, R. Clark Wadlow, and Craig J. Blakeley, on behalf of Inland Empire Television; David Tillotson, Susan A. Marshall, and Gerald P. McCartin, on behalf of Television 30, Inc.; Steven A. Lerman, Dennis P. Corbett, and Sally A. Buckman, on behalf of San Bernardino Broadcasting Limited Partnership; Ashton R. Hardy and James J. Popham, on behalf of All Nations Christian Broadcasting, Inc.; Martin R. Leader, David D. Oxenford, and Lisa R. Mikalonis, on behalf of Channel 30, Inc.

#### DECISION

Adopted: June 17, 1988;

Released: July 5, 1988

By the Review Board: MARINO (Chairman),  
BLUMENTHAL, and ESBENSEN.

Board Member BLUMENTHAL:

#### BACKGROUND

1. This proceeding involves twelve mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 30 at San Bernardino, California. The applicants are: Religious Broadcasting Network (RBN), Solano Broadcasting Limited

(Solano), A&R Broadcasting Company, A Limited Partnership (A&R), Buenavision Broadcasters (Buenavision), SSP Broadcasting, A Limited Partnership (SSP), Good News Broadcasting Network (Good News), Sandino Telecasters (Sandino), Inland Empire Television (Inland Empire), Television 30, Inc. (TV 30), San Bernardino Broadcasting Limited Partnership (SBB), All Nations Christian Broadcasting, Inc. (All Nations), and Channel 30, Inc. (Channel 30). By *Hearing Designation Order*, Mimeo No. 6506, released September 20, 1983, these applications, along with twenty-five others that were subsequently dismissed,<sup>1</sup> were designated for hearing on an air hazard issue against Solano and on the standard comparative issue. Presiding Administrative Law Judge (ALJ) Joseph P. Gonzales subsequently added a real party-in-interest issue against SBB and a misrepresentation/lack of candor issue against Sandino. *Memorandum Opinions and Orders*, FCC 84M-4973 and FCC 84M-4974, released November 28, 1984. The air hazard issue was resolved favorably to Solano by summary decision. *Memorandum Opinion and Order*, FCC 84M-1422, released March 21, 1984. Thereafter, in an *Initial Decision (I. D.)*, 2 FCC Rcd 6561 (1987), the ALJ disqualified both SBB and Sandino on the real party-in-interest and misrepresentation/lack of candor issues, respectively, and granted Channel 30's application after concluding that it was comparatively superior to the other nine applicants. The proceeding is now before the Review Board on exceptions filed by the parties. We have reviewed the *I. D.* in light of the exceptions and reply briefs, oral argument held April 1, 1988, supplemental briefs filed April 20, 1988, and our examination of the record. We adopt the ALJ's findings and conclusions, except as modified herein, and affirm his ultimate conclusion that the grant to Channel 30 is consistent with applicable Commission policies and precedent.

2. In the *I. D.*, the ALJ considered the applications of all twelve remaining applicants according to the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965) (*Policy Statement*), under which the competing applicants are scored against one another on the following two cardinal criteria: (1) diversification of control of the media of mass communications, the Commission's "factor of primary significance"; and (2) "best practicable service." Under criterion (2), the Commission considers such secondary qualities as integration of active ownership with day-to-day management of the proposed station, local residency, local civic activities in the community that would betoken a knowledge of, and interest in, the subject community, racial and sexual characteristics of the applicant (see *Cannon's Point Broadcasting Co.*, 3 FCC Rcd 864 (1988)), prior broadcast experience, and proposed signal coverage differences. See *Policy Statement*, 1 FCC 2d at 395, *et seq.* In almost all cases, those applicants without any other significant mass media holdings are considered comparatively superior to competitors already owning other media interests, the *Policy Statement* being sharply and very deliberately skewed to favor newcomers.<sup>2</sup> For practical reasons, therefore, our review of the exceptions centers first on those directed to the ALJ's findings and conclusions relative to the "primary" comparative factor of diversification of control of the media to assure that those applicants with other attributable media holdings have been appropriately charged with such interests; and to assure at the same time that no applicant has been improperly charged with an existing media interest, if such an interest has been erroneously attributed to that ap-

plicant. After disposing of any "diversification" exceptions, we shall turn to the numerous exceptions relating to "best practicable service" to determine, if possible, any other meaningful comparative differences as between the twelve competing applicants.

### DIVERSIFICATION OF CONTROL OF THE MASS MEDIA

3. In general, the *Policy Statement's* reference to other communications media focuses initially upon co-owned broadcast interests. See 1 FCC 2d at 394-395. Newspaper ownership is also considered significant under FCC "diversification" policies. *see id.*; *see generally FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978), as are co-owned cable television interests, although cable television interests have not been, until recently,<sup>3</sup> regarded by the Commission as very significant media outlets of speech or expression. *Greater Wichita Telecasting, Inc.*, 55 RR 2d 926, 929 (1984) (Comm'n) (CATV interests have traditionally been less important for diversification purposes than broadcast interests, since broadcast stations provide unique local and informational programming to their communities of license and adjacent areas).<sup>4</sup> However, those applicants currently possessing other mass media interests who desire to eliminate in advance any apparent "diversification" handicap *vis a vis* competing applicants holding no other mass media properties may avert any such potential "diversification" demerit by one of two avoidance measures. One, an applicant may make a timely pledge to divest any or all current media interests if that applicant is finally awarded the new facility, an avoidance mechanism we just recently elaborated upon in *Martin Intermart, Inc.*, 3 FCC Rcd 1650, 1651 (Rev. Bd. 1988), *erratum*, 3 FCC Rcd 2155.<sup>5</sup> A second method that an applicant can use to avoid being charged with another extant media ownership interest is to structure its application in a two-tiered mode, so that any principal of that applicant who currently holds other media interests is confined to a "passive" role in the new applicant entity; *e.g.*, by confining that media-burdened principal to the role of a "non-voting" stockholder (if the new applicant is a corporation) or to the role of a "limited" partner (if the new applicant is a limited partnership). The existing media holdings of such purely "passive" applicant principals are not ordinarily attributable for the purpose of FCC media "diversification" policies. *See, e.g., Cleveland Television Corp.*, 91 FCC 2d 1129, 1131-1133 (Rev. Bd. 1982) (media interests of an applicant's nonvoting shareholders not cognizable in comparative "diversification" calculations), *aff'd*, 732 F.2d 962 (D.C. Cir. 1984); *Capital City Community Interests, Inc.*, 2 FCC Rcd 1984-1989 (Rev. Bd. 1987) (media interests of an applicant's "limited" partners not cognizable in comparative "diversification" calculations).<sup>6</sup> Of course, if it is determined that a putatively "passive" principal of an applicant takes, in actuality, an *active* role in the media affairs of that applicant, that principal's other media holdings will be attributable to the subject applicant, just as if the active principal were a "voting" stockholder or, as the case may be, a "general" partner. *See Tulsa Broadcasting Group*, 2 FCC Rcd 6124, 6131 (Rev. Bd. 1987).

4. With that brief background in place, we will review the exceptions to the *I.D.* as they affect the *Policy Statement's* focus on diversification of media control. One set of exceptions asserts that the ALJ erred when, at *I.D.*,

paras. 314-315, he did not assess a "diversification" demerit against RBN, because RBN's proposed General Manager and Chief Executive Officer, Reverend Roy Kenneth Foreman, had entered into a January 27, 1984 agreement with the Construction Permittee of UHF Channel 65, San Jose, California, to provide a minimum of twelve hours a day of programming produced by Reverend Foreman's Cathedral of Faith; and, the agreement further provided, to pay all of the operating expenses of Channel 65. This 1984 agreement was not modified by Reverend Foreman's pledge to resign from Cathedral of Faith until four days after the "B" cut-off day, the established deadline for avoiding the attribution of any other media interests.<sup>7</sup> Initially, we find that the twelve hours per day of Cathedral of Faith programming that was to be supplied to Channel 65 is a media interest to be considered in this case. (As we discuss *infra*, however, Cathedral of Faith has now contracted to purchase outright Channel 65.) In one of the few decisions in which the Board has contemplated the question of whether a program production entity is a medium of communications within the purview of the *Policy Statement*, the Board stated that it would not generally consider such media activities unless the "production company undermines the objectives underlying the principle of diversification of control of mass media, *i.e.*, maximizing available program services and viewpoints . . . ." *Morris, Pierce & Pierce*, 88 FCC 2d 713, 724 (Rev. Bd. 1981), *review denied*, FCC 83-31, released January 25, 1983. *See also Golden State Broadcasting Corp.*, 94 FCC 2d 212, 214 (Rev. Bd. 1983) (radio production company supplying public affairs programming to 21 Arizona radio stations raises media "diversity" concerns)(subsequent history omitted).<sup>8</sup> As we view the instant facts, we submit that there can be no serious debate about whether ownership, for example, of a sizeable broadcast network (an obvious illustration of a "program production" entity) would trigger the Commission's customary media diversification concerns. *See, e.g., National Broadcasting Co. v. United States*, 319 U.S. 190 (1943). And, while the program production interests at issue here are certainly a far cry from a major national or regional broadcast network, Cathedral of Faith's contract to fully provide twelve hours per day of television programming to a same-state television station must register cognizably upon the Commission's idealized standard of "maximizing available program services and viewpoints." We do not say that such an impact equates to actual broadcast station ownership; but, neither can such a media activity be entirely ignored under the traditional diversification tenets of the *Policy Statement*. Moreover, we note that, on March 11, 1987, RBN amended its application to report that Cathedral of Faith, for whom Reverend Foreman and several other RBN directors now work in the area of programming production and distribution (*I.D.*, para. 314), filed an application with the Commission to permit it to purchase outright Channel 65, San Jose. Accompanying that March, 1987 RBN amendment was again the pledge of Reverend Foreman to resign from all of his positions with Cathedral of Faith, should the RBN television application here be granted.<sup>9</sup>

5. The operative questions here, then, are whether the ALJ erred or permitted RBN to improperly improve its comparative "diversification" standing by accepting RBN's pledges to untether Reverend Foreman from his 1984 Channel 65 programming contract; and/or, later, by accepting RBN's March, 1987 pledge that Reverend Foreman would resign all of his Cathedral of Faith offices

should RBN be now awarded the instant Construction Permit. Finding that the extensive Cathedral of Faith programming activities of Reverend Foreman were and are cognizable, *I.D.*, para. 315, we nonetheless agree with the ALJ that Reverend Foreman's divestiture (and/or resignation pledges) were sufficiently timely to avoid any "diversification" demerit which might otherwise have attended his Cathedral of Faith Channel 65 relationships. The Board, of course, keenly appreciates the necessity of establishing firm procedural deadlines in the comparative process, and we recognize that the missing of certain important filing deadlines, even by a single day, can sometimes be fatal to a litigant.<sup>10</sup> Nor do we wish to become arbitrary in the application of established administrative deadlines by appearing to countenance tardiness in one case, but not excusing it in another. However, after much consideration of the facts and circumstances here present, we shall affirm the ALJ's rulings which spared RBN the burden of any potential Cathedral of Faith related "diversification" demerit. As to the ALJ's acceptance of Reverend Foreman's pledge to separate himself from his 1984 agreement to supply Channel 65's programming, a pledge coming four days after the "B" cut-off date, we find RBN's minor deviation to be unremarkable, especially in view of the fact that our prior determinations regarding "program production" activities were not, in retrospect, as well set out as we would have now preferred. *See supra*, *Morris, Pierce & Pierce : Golden State Broadcasting Corp.* Hence, RBN may not have been certain at the "B" cut-off deadline that the Cathedral of Faith/Channel 65 program supply contract was, in fact, a reportable mass media interest having measurable comparative consequences. Even in its exceptions, RBN continues to argue that the Channel 65 program contract was "not a media interest to be reported in FCC Form 301,"<sup>11</sup> and it would appear that RBN's March 2, 1984 amendment reporting the Channel 65 contract was, from its perspective, merely intended as *ad cautelam ex abundanti*.<sup>12</sup> In these circumstances, the ALJ was not unreasonable in accepting RBN's 1984 amendment only four days after the "B" cut-off date. The March 11, 1987 amendment, reporting the outright purchase of Channel 65 by Reverend Foreman's Cathedral of Faith, presents another question. There can be no doubt that Channel 65 itself is a cognizable media interest; nor is there any question that Reverend Foreman's dominant positions with both Cathedral of Faith and RBN would otherwise carry cross-ownership consequences, *see Policy Statement*, 1 FCC 2d at 394 n.5. And, finally, the Board had announced in *Santee Cooper*, *supra* note 3, that after-acquired media interests would be attributable to an applicant unless a "contemporaneous" divestiture pledge attended the new media acquisition. *see* 99 FCC 2d at 794-796. In that regard, we later clarified that "contemporaneous" within this context generally means within the 30-day period permitted by Section 1.65 of the Commission's Rules (47 CFR §1.65) for the reporting of decisionally significant changes in an applicant's status. *Jerome Thomas Lamprecht*, 99 FCC 2d 1219, 1222 (Rev. Bd. 1984), *review denied*, 3 FCC Rcd 2527 (1988). Here, the outright purchase of Channel 65 by Reverend Foreman's Cathedral of Faith occurred on February 2, 1987; but RBN's request to amend its application to report that Channel 65 purchase, and Reverend Foreman's concomitant resignation pledge, were not filed with the ALJ until March 20, 1987. However, it will be recalled that, at the time Cathedral of Faith entered into the 1984 program supply contract with Chan-

nel 65, Reverend Foreman had *already* pledged to resign his Cathedral of Faith positions in the event that RBN here received the San Bernardino Construction Permit. *I.D.*, para. 315. This later (1987) pledge of Reverend Foreman may be seen, then, as essentially redundant of his prior (1984) divestiture pledge. Hence, while RBN's March 20, 1987 filing was technically late under Section 1.65 of our rules, that lateness does not require the attribution of Channel 65 to RBN for comparative "diversification" purposes. *Compare Jerome Thomas Lamprecht*, *supra*, where an applicant was charged with a media interest acquired in May, 1983, but where a post "B" cut-off divestiture pledge was not tendered until February, 1984, and the Board rejected that applicant's exceedingly late attempt to upgrade its comparative position. Accordingly, we affirm the ALJ's refusal to assess any "diversification" penalty against RBN.<sup>13</sup>

6. Having found no error in the ALJ's disposition of the "diversification" aspects of RBN's application, we turn next to his treatment of the other applicants as they relate to their media interests. At *I.D.*, paras. 158-160, the ALJ lists the various media interests of Buenavision principal Frank Dominguez as follows: (1) 24% equity interest and Chairman of the Board of Buenavision Telecommunications, Inc., operator of a cable television system in East Los Angeles; (2) 51% equity interest in Buenavision Telecommunications of Boyle Heights, Inc., operator of a cable television system in Boyle Heights, California; (3) 40% equity interest in Buenavision Cable Television of Colton, Inc., operator of a cable television system in Colton, California. Dominguez is also a principal of Community Service Television Company, Construction Permittee of Channel 60, St. Louis, Missouri and of LPTV Channel 31, San Diego, California. And, he also owns 51% of VistaCom, an applicant for "various low power television stations." Buenavision excepts because the ALJ charged it with a comparative demerit for Dominguez' 51% interest in the Boyle Heights cable television system after finding that no timely (pre-"B" cut-off) pledge was specifically made with respect thereto. *Id.*, para. 166. However, Buenavision explains that at the time Dominguez pledged to divest himself of his East Los Angeles cable system, the Boyle Heights system was a component part of that same cable television franchise and that Dominguez' May 1983 divestiture pledge covered the Boyle Heights component as well.<sup>14</sup> No competing applicant here has challenged this representation. We have reviewed the record on this point and agree with Buenavision that Dominguez' 1983 cable television system divestiture pledge was intended to cover, and did cover, the Boyle Heights system as well as the East Los Angeles and Colton cable television systems. We must, therefore, reverse the ALJ on this minor point, and vacate his assessment of the "diversification" demerit against Buenavision.

## BEST PRACTICABLE SERVICE

### *Integration of Ownership with Day - to - Day Control of the Station*

7. After the element of diversification of control of the mass media, the *Policy Statement* favorably emphasizes the integration of ownership with actual day-to-day control over the proposed broadcast facility. 1 FCC 2d at 395. Quite frequently, these days, the quantitative difference in the amount of ownership "integration" credit awarded is

all that dispositively separates the winning applicant from the also-rans. See, e.g., *Jerome Thomas Lamprecht, supra*, 3 FCC Rcd at 2527 (100% fulltime "integration" factor prevails over competitor's 76% corresponding factor). While several recent applicants have questioned the rationality of basing broadcast Construction Permit awards on bare percentage differences in "integration" proposals, see, e.g., *Martin Intermart, supra*, 3 FCC Rcd at 1652 & n.3, the Commission has yet adhered to its position that quantitative (percentage) differences in ownership "integration" proposals cannot be overcome by any measure of qualitative differences in the pertinent characteristics of closely competing applicants. *Horne Industries, Inc.*, 98 FCC 2d 601, 604 n.12 (1984) (citing *Alexander Klein, Jr.*, 86 FCC 2d 423, 428-429 (1981)). Accordingly, we next turn our attention to the exceptions taken to the ALJ's disposition of the various ownership "integration" proposals advanced by the applicants.

8. Before we do so, however, it is especially useful in this particular case to explain that the Commission's ALJs these days are - necessarily and properly we believe - scrutinizing very carefully the putative ownership structures and the "integration" proposals of many recent applicants to guard against what FCC Chairman Dennis R. Patrick recently described as an influx of "sham applications that manipulate comparative criteria to maximize a paper preference while disguising the real party in interest" who actually controls the broadcast applicant entity.<sup>15</sup> As many of our recent comparative cases reveal, the Commission's application processes are currently plagued with fraudulent applications wherein the real-parties-in-interest contrive to artificially structure an applicant entity around so-called principals who are, in fact, no more than false fronts interposed solely to increase that applicant's chances to prevail under the *Policy Statement's* various comparative criteria. Where such shams are detected, they are rightfully rejected by the Commission. See, e.g., *Pacific Television, Ltd.*, 3 FCC Rcd 1700 (1988) (aff'g ALJ and Review Board rejection of sham ownership proposal). See also *KIST Corp.*, 102 FCC 2d 288 (1985), *aff'd*, 801 F.2d 1436 (D.C. Cir. 1986); *NEO Broadcasting Co.*, 103 FCC 2d 1031 (Rev. Bd. 1986), *review denied*, 1 FCC Rcd 380 (1986).<sup>16</sup> Because of this recent outbreak of sham broadcast applications, *bona fide* applicants and the Commission's ALJs have been compelled to examine much more closely the alleged ownership structures and, more specifically, the purported "integration" designs of numerous competing applicants to determine whether their proposals genuinely reflect the composition of the particular applicant or whether that applicant is, in reality, an utterly artificial construct devised exclusively for the purpose of deceitfully exploiting the Commission's comparative system. As illustrated clearly by the case at bar, separating the wheat from the chaff amongst our recent comparative applicants remains an imperfect science. For, of the twelve competing applicants remaining in this case, the ALJ here refused to credit, in whole or in some material respect, the proffered "integration" proposals of all twelve. Although the Board, for the reasons set forth below, rehabilitates several of the applicants and restores, in whole or part, the "integration" credit originally sought by some applicants, we do not denigrate the ALJ's vigilance in the present environment described aptly by FCC Chairman Patrick. Unless sham applicants are stoutly rebuffed, the very fabric of the Commission's licensing process will be

irreparably rent, and our broadcast license rolls reduced to a shabby sodality of frauds, mountebanks, and sundry speculators of the very lowest echelon.

9. *Channel 30*. Channel 30 is a California corporation composed of fourteen individual shareholding principals, four of whom (controlling approximately 33% of the corporation's total shares of stock) are represented here as the entity's only voting shareholders. *I.D.*, para. 7. The remaining ten shareholders (controlling approximately 66% of the corporation's stock shares) are represented as "nonvoting". For purposes of computing an applicant's quantitative "integration" factor, we examine only the "integration" proposals of the voting shareholders on the Commission's generally accepted premise that nonvoting principals have absolutely no management control over the operational activities of that corporation. See, e.g., *Cleveland Television Corp.*, *supra*; see generally *Auribution of Ownership Interest*, *supra* note 6. Channel 30's four voting shareholders are listed as follows:

Voting Shareholders	Voting Stock	Ownership Interest
Lucille Gilbreath	28.6%	10.924%
Betty Cox Johnson	28.6%	10.924%
Lucy Lopez	28.6%	10.924%
Suzanne Schott	14.3%	.840%

10. The ALJ credited the individual "integration" proposals of Gilbreath, Johnson and Lopez, see *I.D.*, para. 34, but he denied such credit to Schott, primarily because he found her to be "in effect a 'stand-in' for her husband," a communications consultant from whom she had originally acquired her Channel 30 stock. *Id.*, para. 30.<sup>17</sup> Animating the ALJ's apprehension that Schott would not play a true or meaningful managerial role at the proposed station was the fact that her testimony relating to her intended management duties was "noticeably confused" (*id.*). The ALJ also recorded that Schott had neither broadcast nor any other managerial experience. In rejoinder, Channel 30 accurately observes that a lack of previous managerial experience is not a valid basis for denying "integration" credit, the Commission considering such inexperience to be a remediable condition. *WFSP Inc.*, 99 FCC 2d 444, 446 (Rev. Bd. 1984) (citing *Webster - Baker Broadcasting Co.*, 88 FCC 2d 944, 951-952 (Rev. Bd. 1982)). Channel 30 further contends that although Schott's answers did reflect some confusion on a few minor points, some of that uncertainty was the product of unclear questions and Schott's occasional inarticulateness. It argues that nothing in the record justified a finding that Schott would not "integrate" fulltime into station activities or perform the proposed role of the director of the station's public affairs department, for which role she is said to be slated.

11. We have reviewed the record on these points very closely and must find that no Commission law or precedent supports a denial of Schott's "integration" credit on the grounds stated by the ALJ. Unlike, for example, the sham principal in *Pacific Television, Ltd.*, *supra*, there is here no evidence that Schott was totally unfamiliar with her application or wholly ignorant of her future status or her proposed duties. And, unlike the situation in *N. E. O. Broadcasting Co.*, *supra*, there is no reliable evidence here of a blatant sham. Schott asserted that her stock was transferred to her by her husband because he was, at that time, seriously ill (and is now deceased, see *supra* note 17). Her explanation is plausible, and essentially unchallenged except for the purely speculative ruminations of her opponents, none of whom sought a real-

party-in-interest issue against Channel 30. Without such an issue, or the adduction of evidence compelling the addition such an issue, we will not presume Schott to be a dummy for her husband. See *Tequesta Television, Inc.*, 2 FCC Rcd 7324, 7325 (Rev. Bd. 1987) (paras. 5-6); see also *I.D.*, para. 3 (adding real-party-in-interest issue against SBB Broadcasting, another applicant in this very case). Finding no substantial basis in the record evidence or in the law to reject Schott's tendered "integration" proposal, on the particular grounds cited by the ALJ, the *I.D.* is reversed in that respect. However, for reasons set forth more fully *infra*, para. 54, our award of a 100% quantitative "integration" credit to Channel 30 is tentative and subject to Commission clarification on the comparative status of applicant principals owning less than cognizable levels of equity in a broadcast property. See also *infra* para. 37 & n.37. As with the other eleven applicants discussed below, we will defer discussing Channel 30's qualitative "enhancing" attributes until a later section of this decision (see *infra* para. 52, *et seq.*), after we have completed our review of the exceptions directed to the basic quantitative aspects of the full dozen "integration" proposals here under basic review.

12. *Sandino*. The ALJ rejected all ownership "integration" credit for Sandino's purported sole "general" partner, Jose M. Oti, after finding that Sandino had misrepresented the ownership composition of its "limited" partnership during the course of a partially aborted merger involving Sandino and a now-dismissed competing applicant, Crocker Communications Corp. As originally filed, Sandino was the sole proprietorship of Jose Oti. *I.D.*, para. 36. According to Sandino, counsel for Crocker Communications Corp. approached Sandino counsel in January 1984 with a view toward merger of the two separate applicants. After agreeing to discuss this matter, the parties met in February and April of 1984 to negotiate the concluding details. On May 14, 1984, Sandino and Crocker Communications filed with the ALJ a "Joint Petition for Approval of Merger Agreement and Dismissal of Application," representing therein that (1) Crocker Communications was voluntarily dismissing its own pending application and that (2) Crocker's chief principal, Frankie Crocker, and another individual, Meshulam Riklis (who had theretofore been merely a financier of the original Crocker application) would become merely "limited" partners of the newly reconstituted Sandino application. The "Joint Petition" declared that, under the merger agreement, Oti would become a 30% equity owner and the sole "general" partner of Sandino, with "limited" partners Crocker and Riklis owning, respectively, 20% and 50% of the new Sandino partnership's equity. On May 21, 1984, the ALJ routinely granted the "Joint Petition" and ordered Sandino to expeditiously file with him the limited partnership agreement formalizing the subject merger.

13. However, the approved merger was never finally consummated as proposed in the "Joint Petition" for reasons essentially immaterial to our immediate regulatory concerns.<sup>18</sup> Suffice it that Frankie Crocker subsequently and repeatedly declined to execute the new Sandino limited partnership agreement; and, ultimately, on August 2, 1984, Sandino filed still another "Petition for Leave to Amend" in which Crocker's participation was expunged and Riklis' "limited" partnership interest increased to 70% of the total equity of Sandino. Sandino's August 2 petition

for leave to amend was opposed by RBN, and on November 28, 1984, the ALJ added an issue to be tried against Sandino:

To determine whether Sandino Telecasters or any of its principals (including Crocker Communications Corporation) has misrepresented facts or been lacking in candor with respect to matters arising from a merger agreement between Sandino Telecasters and Crocker Communications Corporation and, if so, the effect thereof on the basic or comparative qualifications of Sandino Telecasters.

*Memorandum Opinion and Order*, FCC 84M-4974, released November 28, 1984. After hearing this issue, and in the *I.D.*, the ALJ held that Sandino lacked candor in submitting the May 14, 1984 merger agreement and depicting itself therein as a reconstituted limited partnership. In that regard, the ALJ concluded that Oti had concealed the status of his unsuccessful negotiations with Crocker until he had reached a new accord with Riklis to assume the obligations on which Crocker had reneged. *I.D.*, para. 43. Sandino's exceptions hold Oti blameless for Crocker's failure to execute the limited partnership agreement anticipated in the original May 14 merger documents.

14. We begin our analysis with the principle first announced in *Anax Broadcasting, Inc.*, 87 FCC 2d 483, 488 (1981), in which the Commission declared that an applicant's failure to identify its "limited" partners,<sup>19</sup> alleged in that case to hold a 71% equity interest in one of the applicants, was not cause for dismissal of that application because - under the Commission's prevailing premise - "limited" partners play no legal role in the management or control of an applicant entity. Thus, when the *Anax* applicant sought in the midst of the licensing proceeding to amend its application to raise the "general" partner's original ownership share of 28% to 99% (by assuming the unidentified "limited" partners' 71% purported equity interest), the Commission nevertheless held that no "significant" ownership change of that applicant entity had occurred. *Id.*, at 488. At the time, the *Anax* ruling that a majority ownership transfer in mid-hearing did not constitute a significant ownership shift was quite novel, but the *Anax* Commission reasoned that the addition or deletion of "limited" partners did not affect the "control" aspects of an applicant entity or confer upon it any comparative advantage. Indeed, so institutionalized has the *Anax* ruling become that current applicants need not even identify any of the entity's "limited" partners (or, if a corporation, "nonvoting" shareholders), see FCC Form 301 (as revised October 1986), Pike & Fischer Rad. Reg., pp. 98:301 - 1 *et seq.*, irrespective of the fact that such undisclosed principals might actually own as much as a 99% equity interest in the particular broadcast applicant or licensee.<sup>20</sup> Hence, under the prevailing *Anax* principle, Sandino's May 14, 1984 amendment petition seeking to add Crocker and Riklis as "limited" partners jointly holding a 70% equity interest in the Sandino application was legally permissible; and, in routinely accepting that Sandino amendment, the ALJ so recognized. The critical question here is whether Sandino should have been fatally disqualified later when, on August 2, 1984, Oti despaired of including Crocker as a 20% "limited" partner in Sandino, and instead added Riklis alone as Oti's solitary "limited" partner. We have reviewed the evidence and the



testimony on this point and find that no actionable misrepresentation occurred in Oti's May 14, 1984 petition, nor did Sandino display a disqualifying lack of candor in not reporting earlier Crocker's recalcitrance over signing the new Sandino limited partnership agreement. Neither the ALJ nor any other party disputes Oti's version of the events leading to Crocker's eventual elimination from the Sandino application. And, inasmuch as Riklis had never been more than a passive financier - first to Crocker, then to Oti - we perceive no motive for distorting the actions of Frankie Crocker, whose proposed 20% interest in Sandino was simply a *quid pro quo* for Crocker's withdrawal of his own long-shot application. Under the circumstances conveyed by Oti, circumstances not contradicted in the *I.D.* or the record, we find that the ALJ's disqualification of Sandino from this proceeding was error. Though this Board has no compunction against disqualifying a license applicant for serious misrepresentation, see, e.g., *KQED, Inc.*, FCC 88R-25, released May 16, 1988, we find no deliberate misrepresentation or lack of candor on Sandino's part. We therefore grant its exceptions and award to it a 100% quantitative "integration" factor based on the proposed fulltime management commitment of Sandino's sole "general" partner, Jose M. Oti.

15. *San Bernardino Broadcasting*. SBB attempted to portray itself as a "limited" partnership constructed of two disparate ownership components: (1) a corporate "general" partner identified as San Bernardino Valley Broadcasting Co. and owned entirely, in turn, by Anita Van Osdel; and (2) an array of sixteen other individuals said to be collectively the "limited" partners of SBB. However, Van Osdel's corporation - the sole purported "general" partner of SBB - holds merely 10% of the total equity of SBB, while the collective "limited" partners own in the aggregate fully 90% of this applicant's equity. Pursuant to a real-party-in-interest issue added by the ALJ, see *Memorandum Opinion and Order*, FCC 84M-4973, released November 28, 1984, the ALJ disqualified SBB as an applicant. See *I.D.*, paras. 51-60.

16. We affirm, *con brio*, the ALJ's refusal to award "integration" credit to SSB; its application was and remains a travesty and a hoax. We need not repeat, point-by-point, all of the findings of fact which the ALJ has set out to support his conclusion that the progenitor and the real-party-in-interest of SBB is definitely not Van Osdel, she being merely a fig leaf for the true kingpin of SBB, one Michael Parker, who currently holds an interest in numerous other broadcast permits (*I. D.*, para. 61), and who could not in his own identity have hoped to prevail in this very close comparative contest. As the *I.D.* adequately chronicles, Michael Parker prefabricated the SBB application for Channel 30 prior to the intromission of Van Osdel, who purportedly materialized as SBB's sole "general" partner only the day before the SBB application was filed with the FCC. Van Osdel allegedly received her "controlling" 10% equity interest from Parker's own employee, S. Kim O'Neal, while Parker transferred the equity interest previously held in his own name to his sister (and brother-in-law), Sally (and Larry) Peterson, who are currently listed as holding 20% of SBB's total equity. Having ostensibly yielded up his entire SBB interest, Parker signed an agreement with Van Osdel - the new SBB "regent" - by which Parker became SBB's chief "consultant". For this, Parker was slated to receive "60,000 for past services to the applicant and an hourly fee for future services." *Id.*, at para. 54 (citing Tr. 3351-52.

3361). In his new subservience, though, Parker's actual role was remarkably identical to his previous position. For example, Parker - not Van Osdel - "arranged" the station's financing with an individual with whom he had shared an office: Parker - not Van Osdel - selected, and communicated with, SBB's lawyer and its engineer. Indeed, Van Osdel did not even review the by-laws of SBB's corporate "general" partner at the time she became an applicant. Tr. 3351. Moreover:

The Certificate of Limited Partnership lists Mr. Parker's office as the principal place of business for the corporate general partner (Tr. 3414-15). Mr. Parker maintained the corporation's books and records (Tr. 3572). He also accompanied Ms. Van Osdel when she opened the corporate general partner's bank account, and at his suggestion the account requires the signature of any two of the following four persons: Mr. Parker, himself; his brother-in-law, Mr. Peterson; his employee, Ms. O'Neal; and, finally, Ms. Van Osdel (Tr. 3364). When Ms. O'Neal left Mr. Parker's employ, Arlene Meryhew another Parker employee, became her replacement. Ms. Van Osdel alone cannot sign corporate checks, although corporate checks can be executed without her participation.

*I.D.* at para. 55. Parker accompanied Van Osdel to First Interstate Bank to open the corporate checking account, but Van Osdel - SBB's putative sole "general" partner - did not acquire the corporate checkbook, for reasons that appear as follows in the record:

JUDGE GONZALES: I'm a little confused. Mr. Parker was with her at the bank when she got the temporary checks?

MR. ANDREWS: And opened the account. And then Mr. Parker --

JUDGE GONZALES: And she took them home and then mailed them to Mr. Parker?

MR. ANDREWS: That's the deposition testimony.

JUDGE GONZALES: Why wasn't the checkbook just given to Mr. Parker at the Bank?

THE WITNESS: Because --

JUDGE GONZALES: Was it always your intention to give them to Mr. Parker?

THE WITNESS: Yes it was, but I stuck them in my briefcase and I forgot --

JUDGE GONZALES: You inadvertently kept them, is that it?

THE WITNESS: Yes.

Tr. 3400. When questioned about the applicant's books and records, Van Osdel responded:

Q. Mrs. Van Osdel, who maintains the records of the capital accounts on the books of the partnership or the partnership books, the limited partnership books?

A. Mike Parker.

Tr. 2113-14. Moreover, SBB's Certificate of Limited Partnership states:

that the address of the partnership's principal place of business in Washington is San Bernardino Valley Broadcasting Company, a Washington limited partnership, care of San Bernardino Valley Broadcasting Company, 4041 Rustin Way, Suite 1-D, Tacoma, Washington.

Tr. 2088-89. The Tacoma address of SBB is of course Parker's, not Van Osdel's.

17. Other record evidence affirms that Van Osdel's role was purely nominal. Thus, as to the substance of SBB's application:

Q. Mrs. Van Osdel, what information did you contribute to this application?

A. Personal information.

Q. For example?

A. Name, address.

Q. Who did you provide that information to?

A. Kim O'Neal.

Q. And again Kim O'Neal at that time was employed by Mr. Parker?

A. Yes.

Q. Did you choose the engineer?

A. No.

Q. Did you choose communications counsel?

A. No.

Q. Had the remainder of this application been filled in when you signed it.

A. I reviewed it.

Q. You reviewed it.

JUDGE GONZALEZ: I don't believe that is responsive.

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Q. Were all of the questions in the application answered at the time you reviewed it?

A. Yes.

Tr. 2112-13. As another illustration, Parker also arranged for the equipment leasing for the station, and Van Osdel was asked:

Q. Do you know what equipment you intended to lease?

A. No, I don't.

Q. Do you know who procured that letter for the applicant?

A. Mr. Parker.

Q. Do you know who he spoke with?

A. No, I don't.

Q. Do you know if Mr. Parker had a previous relationship with Republic Leasing.

A. No, I don't.

Q. Do you know anything about the Utility Finance Corporation?

A. No, I don't.

Q. Did you ever procure a proposal from the Utility Finance Corporation?

A. Not to my knowledge.

Q. Do you know if anyone on behalf of the applicant ever procured a proposal from Utility Finance Corporation?

A. I don't know that.

Tr. 3401-02. One final example, though, will impart the true substance of Van Osdel's role and highlight the speciousness of Van Osdel's claims of exclusive control over SBB:

Q. Ms. Van Osdel, you also said that you saw an opportunity to meet the programming of the community, and that was one of the reasons you got involved, is that correct?

A. That's correct.

Q. But you didn't have anything whatever to do with developing the program percentages which were originally placed on the application, did you?

A. No, I didn't.

Tr. 3595. Parker, naturally, had devised SSB's proposed television programming, the very essence of a station's most elemental activity.

18. After finding that significant and material questions of fact surrounded SBB's claim that Van Osdel was the sole controlling party in its application, the ALJ added against SBB the aforementioned real-party-in-interest issue. As if to evidence Van Osdel's purported new supremacy, the applicant hastily reported back that Parker's consultancy had been inexplicably and summarily "terminated." *I.D.*, para. 55. But, citing *National Black Media Coalition v. FCC*, 775 F.2d 342, 356-357 (D.C. Cir. 1985), the ALJ correctly held that actions *post lium motam* are entitled to little evidentiary weight, and Parker's alleged "termination" occurring after the ALJ's addition of the real-party-in-interest issue is wholly unpersuasive. Having reviewed, in totality, the underlying record on this matter, we find no error in the ALJ's core conclusion that Van Osdel is neither the sole nor dominant management figure purported by SBB, but a convenient vizard. She can claim no serious or material role in SBB's most elementary affairs. SBB is a transpicuous sham, compare *Pacific Television, supra*, and the ALJ justly rejected its attempted fraud.<sup>21</sup>

19. A & R. Relying upon our decision in *Cotton Broadcasting Co.*, 104 FCC 2d 473, 475-477 (Rev. Bd. 1986), the ALJ rejected A&R's claim for ownership "integration" credit because all of its principals (save one, Charles E. Walker, a 27.5% equity partner) are denominated as both "general" partners of A&R and, at the same time,

"limited" partners. See *I.D.*, paras. 102, 133. The ALJ also found that Walker, identified as A&R's managing general partner prior to the "B" cut-off date (but now depicted as merely a "limited" partner), was, and will be, the dominant principal of the subject group. A&R asserts that its partnership complies with state law and that its activities and its ownership structure prior to the "B" cut-off deadline are irrelevant.

20. We shall affirm the ALJ's denial of "integration" credit to A&R because the Commission has made clear that, while it will ordinarily accept the premise that "limited" partners are purely passive investors who take no part whatsoever in company management, any management-type activities evidenced by such principals negates the efficacy of the claim of "limited" partner status. See *Attribution of Ownership Interest*, *supra* note 6, 97 FCC 2d at 1022-1023; *on reconsideration*, 58 RR 2d at 616-620. It is true, as A&R's exceptions contend, that the regulatory purpose behind the Commission's premium on ownership "integration" is to strengthen "the bond between legal responsibility and day-to-day management authority."<sup>22</sup> The problem here, however, is that all of A&R's principals (including Walker) are apparently unable to determine whether they wish the tightly confined personal liability of "limited" partners or the plenary management authority and responsibility of a company's "general" partners. Declining to make that fundamental election, the majority of A&R's principals wish to be regarded as both - and at once. While the Board appreciates that there could be some unspoken business reasons for principals to adopt the bifurcated equity allocation reflected in A&R's dualistic partnership structure, and it is equally cognizant that the Commission desires to accord all applicants flexibility in "structuring [their] business proposal" without "second-guess[ing] an applicant's business judgment - so long as it is, in fact, a good faith business decision." *Victory Media, Inc.*, 3 FCC Rcd 2073, 2075 (1988), we decline to speculate here whether the majority of A&R's principals intend to assume all full legal responsibility for their company or, instead, retreat to the legal shelter of their concurrently alleged "limited" partnership status. Moreover, even if we were to ignore entirely the "limited" partnership elements of the A&R structure as to its five "dual" partners, we could award A&R no more than a 73% quantitative "integration" factor, because Charles E. Walker - presumably bound by the identical "limited" partnership constraints as his five associates - has been shown on this record to be a very active principal indeed, and not a mere passive investor. Recalling that, up until the "B" cut-off date, Walker had exercised all powers and prerogatives as A&R's managing general partner, the ALJ found that even after that date Walker took a highly active role in A&R's basic business affairs. Thus:

Mr. Walker continued to be actively involved in prosecuting A&R's application even after he resigned as general partner. Mr. Walker took an active role in discussions among A&R principals with respect to matters concerning the applicant (Tr. 2381). He continued to attend A&R meetings (Tr. 2333), and he continued to vote on matters on the agenda of the partnership (Tr. 2334-35). Mr. Walker also approached Ms. Shelton about joining the partnership, after he had already converted his interests

from that of a general partner to a limited partner (Tr. 1029). As a limited partner, he also retained significant voting rights.

*I.D.* at para.135. The underlying record affirms the ALJ's determination that Walker, who deliberately altered his nominal status on the "B" cut-off date "so as to receive enhanced comparative credit" (A&R Exceptions at 5), must be regarded not only as an active partnership principal, but the dominant figure of the whole A&R combine. Walker has not been, nor is he now, a mere passive investor, totally and securely insulated from A&R's affairs, so the ALJ was correct in disregarding Walker's putative "B" cut-off switch to "limited" partnership status. All in all, A&R is plainly not what it purports to be; and even if it were, the institutional schizophrenia of those principals who desire to be regarded simultaneously as "limited" (*viz.*, "passive") and "general" (*viz.*, "active") partners bespeaks of an applicant unprepared to equate full legal liability for their company with a *corresponding* degree of management authority and responsibility. Cf. *Greater Wichita Telecasting*, *supra* note 22, 96 FCC 2d at 989. A&R cannot have it both ways, and then expect the Commission to decide which modality reflects its genuine character.<sup>23</sup>

21. *Solano*. As it was with ancient Gaul, Solano is a tripartite formation consisting of (1) Solano Broadcasting Company (SBC), itself a partnership of four individuals (Henry T. Mendoza, III; David Garcia; Annabel R. Verches; Patrick D. Pattison) reported to hold 20% of Solano's total equity; (2) C30-I, a partnership consisting of fifteen different individuals; and (3) C30-II, a partnership consisting of yet six additional individuals. *I.D.*, paras. 63-64. Solano would have it that the four SBC principals are Solano's only "general" partners, whilst C30-I and C30-II are but "limited" partners in the larger Solano confederation. Because he found that at least several of the principals of C30-I and C30-II went greatly beyond the roles of mere "passive" investors, and took an active part in arranging and directing Solano's most basic business affairs, the ALJ counted both C30-I and C30-II as tantamount to "general" partners. Since only the four SBC principals are proposed for actual "integration" into the management of Solano's intended station, the ALJ awarded it "at most" a 20% quantitative "integration" factor, corresponding directly to SBC's 20% equity share of the larger Solano enterprise. *Id.*, para. 98.

22. In determining that at least several of the principals of C30-I and C30-II - Solano's putative "limited" partners - were exceedingly active in the affairs of Solano, the ALJ found, for example, that James F. Parker (a 12.65% partner in C30-I) and Michael Rosenbloom (a 23.33% partner of C30-II) were largely responsible for organizing Solano, drafting its partnership documents, and generally orchestrating the affairs of the SBC "general" partners. *Id.*, para. 93. Both Parker and Rosenbloom, who are Solano attorneys, were extensively consulted throughout the application process, see *id.*, para. 95-96, and the ALJ concluded that the purported "general" partners of SBC were fundamentally ignorant of Solano's financial plans (including the very basis on which Solano certified as to its financial ability on its application). *Id.*, para. 95. The ALJ also held that "Solano's limited partners also took an active role in selecting the principals of Solano's general partners as well as determining their specific roles at the